SUMMARY

This thesis examines the work of the bishop's consistory court of the Diocese of Lichfield and Coventry through the cause papers and administrative documents generated between 1680 and 1830. These courts were extensively used through the century, business peaking in the 1730s and 1780s at between 200 and 250 causes per year. The overall pattern of the work of the courts is established in relation to its constituent elements of defamation, tithes, matrimonial, testamentary and Office causes. The social and spatial provenance of the plaintiffs is considered. Almost all of the plaintiffs were of the 'middling sort' and lower social levels, and many were women. Comparative material from Birmingham in 1770 would suggest that the users of the courts mirrored the overall occupational structure of the period.

A re-evaluation of the work of the ecclesiastical courts shows that the Lichfield courts represented a source of arbitration for intractable disputes of predominantly rural origin. Causes arose from within the community, rather than being imposed externally by the church authorities, and formed a channel for public censure of those who offended against local mores, regardless of sex or social standing. Judgements in the form of sentences were often invisible and the courts have been considered to have been useless. The fact that these courts could harm neither purse nor person was not a failing, but a strength in a 'face to face' society, where an individual insisting upon the incarceration or financial deprivation of another could seriously escalate conflicts within a community. The medieval function of these courts was merely to 'correct and punish the disobedient, the unquiet and the animous', and case studies from Lichfield demonstrate that this function continued into the nineteenth century.

The Consistory Court of the Diocese of Lichfield and Coventry

and its work, 1680-1830

by

Anne Tarver

Doctor of Philosophy

Department of History

University of Warwick

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'Will you maintain and set forward, as much as shall lie in you, Quietness, Love and Peace among all men: and such as be unquiet, disobedient and animous, within your Diocese, correct and punish, according to such authority as you have, by God's word, and as to you shall be committed by the Ordinance of this Realm?'

The episcopal enthronement ceremony.

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DeRO	Derbyshire Record Office
LeRO	Leicestershire Record Office
LJRO	Lichfield Joint Record Office
NUMD	Nottingham University Manuscripts Department
SaRO	Shropshire Record Office
StRO	Staffordshire Record Office
WoRO	Worcester Record Office, Fish Street
WSL	William Salt Library, Stafford

INTRODUCTION

Despite the evident reservations of its founder and early teachers about the place of law in Christian life, the church soon began to develop its own legal system, for its leaders quickly discovered that a viable community not only needed goodwill and fraternal love, but also required some rules and regulations for the orderly conduct of its business, to define the functions of its officers, and to govern relationships among its members.

James A. Brundage. (1)

The roots of ecclesiastical jurisdiction lie in settlements around the Mediterranean, in the early centuries of the Christian era when each religious community was regulated by its own rules of conduct. The spread of Christianity through central and northern Europe took with it these rules of conduct, and this form of law became widespread. By the late tenth century in England, 'the bishop of the shire and the ealderman, ... there expound both things, as well the law of God as the secular law'. (2) This is the crux of canon law - it was a form of religious law governing the community. Punishments were seen as part of a process of maintaining the spiritual health of the soul, and correcting the manners of those who had offended not only God, but their neighbours and the community at large. Their punishments were spiritual in nature rather than physical or financial.

Every bishop agreed during his enthronement ceremony, to his religious obligation to 'correct and punish', and his authority was understood not only in spiritual terms, but also in accordance with the

laws of the land. English law had separated secular and ecclesiastical law, and the church courts functioned throughout the medieval period. The form of law used was not merely that of the church, but included elements of civil and common law, which were used in a strict order of precedence. (3)

Appeals were passed, from the reign of Stephen onwards, from the provincial church courts to the papal courts in Rome. Local criticism of the English courts throughout the medieval period would suggest that they were not popular, but they continued to function, and in the pre-Reformation period appear to have been used frequently. (4)

The Reformation affected the courts in four ways. First, appeals to the papal courts were forbidden by the Ecclesiastical Appeals Act of 1533, after this they had to be heard in the Upper House of Convocation, under s.4 of the Act. (5) From the following year, appeals were to be addressed to the king as head of the church, and heard in the Court of Chancery, under the Submission of the Clergy Act, 1533. (6) The High Court of Delegates was constituted in the same year (25 Hen.VIII.c.19), and remained the highest court of appeal in ecclesiastical matters for three hundred years. From 1833 appeals were to be made to the monarch in council. (7)

Second, the teaching of canon law in the universities was replaced by civil law, and all law degrees were thereafter in that branch of the subject, following Cromwell's injunctions of 1535. (8) Canon law was reduced to a very small part of the legal syllabus. The most effective local method of passing on canon law was henceforth by the use of articled clerks, 'bred up to the law', and sanctioned as notaries

public by the Archbishop of Canterbury (in the southern province) on completion of their training. (9) Each diocesan court would have followed its own interpretation of the law and its own customs. Third, the events of the Reformation severed contacts with continental canonists, and consequently there was little new intellectual input to this legal code. Finally, the courts continued to function but in an ambivalent manner, in that they were the creation of the Catholic tradition but continued to be used by the new Protestant church. The Canons of the Church of England were revised in 1604 but there was no overall reform of the church courts. Without any other input they ceased to evolve, and simply continued to work according to traditional practice.

It has been widely assumed that the activities of the ecclesiastical courts were gradually eroded by social and political factors during the late seventeenth and eighteenth centuries, to the point where they almost ceased to exist. The extent of this erosion has not been fully explored and perceptions vary from one author to another. Parliamentary action finally removed the jurisdiction of these courts in a piecemeal manner in the nineteenth century. Defamation cases were taken away in 1855 under the provisions of the Ecclesiastical Courts Act. (10) In 1857 testamentary business was transferred to the newly created Court of Probate by the Court of Probate Act. (11) Matrimonial jurisdiction was transferred to the newly established Divorce Court by the Matrimonial Causes Act of the same year, although the granting of licences continued to lie in ecclesiastical hands. (12) The Ecclesiastical Courts Jurisdiction Act of 1860 finally removed their anachronistic privilege of punishing the laity for brawling in the church or churchyard. (13)

Twentieth century research on the history of the church courts relates predominantly to the period of religious and political turbulence between the Reformation and the Civil War, although there has also been some interest in the re-establishment of the church and the courts immediately after the Restoration. (14) Most published work has been either thematic in nature or 'church-based', examining the courts in terms of the perceived 'power' and 'social control' of the Anglican church. Work of this type has used the courts as a barometer of the policy and influence of the church, by measuring the types of office business, an approach used in the post-Restoration period by Martin Jones. (15) Thematic studies, where a single area of the business of the courts has been studied in depth, sometimes using comparative material from another parallel court, have tended to focus on defamation, sexual or disciplinary offences. (16) The processes involved in bringing causes against clergy and parishioners have not been examined in detail, and little research has been carried out on the overall use of the courts by the population at large. Work is also needed to examine the relationship between the church courts and other forms of law.

Academic interest in the history of the courts began with the work of Frank Hockaday, who used cause papers to unravel their legal procedures. His purely descriptive work was carried out at the turn of the century on the courts of the diocese of Gloucester, and finally published in 1924. (17) Hockaday's work was followed by that of F.D. Price who published the results of his examination of the Gloucester courts during the Elizabethan period in 1942. (18) The diocese and its associated courts had only been established at the Reformation, and

Price revealed examples of apparently serious corruption in the courts. (19) His interpretation of contemporary criticism led to the widespread belief that corruption in the church courts of the Elizabethan period was extensive, and that their sanctions were inadequate. The scale and scope of this earlier work was limited by the contemporary accessibility of documents, the Gloucester records being among the few then available for study. (20) Perceptions of the courts by those working in the early modern period were for many years dominated by Christopher Hill, who saw them as anachronistic and corrupt. (21) He depicted them as hated by the laity and widely regarded as intrusive.

Much of the research on church courts has focused on the act books rather than the more detailed cause papers. Ralph Houlbrooke's work on the early sixteenth century courts of the Winchester and Norwich dioceses (22) and that of Brian Woodcock on the Canterbury courts, were both based on the act books. (23) Early work on the post-Reformation courts by Frank Emmison used the same source for the archdeaconry of Essex to illuminate the social history of the Elizabethan period. (24) Richard Helmholz, as a legal historian, has used cause papers to provide evidence for late medieval defamation causes. (25) This work has been followed by that of J.A. Sharpe, Martin Ingram and Laura Gowing, working on defamation and matrimonial causes in the early modern period. (26)

Recent work on two late seventeenth century courts has shown that they revived very quickly indeed after the Restoration. Martin Jones argued that the office business of the courts in the Oxford diocese concentrated on re-filling the Anglican churches, in an attempt to regain their congregations from the dissenting conventicles. The

Peterborough courts, whilst initially pursuing dissent, later changed course to concern themselves with immorality and ecclesiastical buildings. This, according to Jones, avoided the 'crippling effect that was felt in the [Oxford] courts' by the Act of Toleration of 1685. (27)

There has been very little academic examination of the work of the church courts in the eighteenth century. An unpublished report by Barry Till on the York diocese found that the Consistory courts continued to operate after 1720 but on a very reduced level. (28) It has been assumed that most consistories were in the same situation, and that research in this area would prove less than fruitful. Polly Morris's work on the eighteenth century courts in Bath and Wells would suggest that the high level of defamation causes found earlier by Sharpe at York had declined dramatically in the intervening period. (29) The nineteenth century report on the courts by the Parliamentary Commissioners showed a total of 21 Provincial and Diocesan courts still at work in England and Wales, but handling only 1,177 causes between January 1827 and January 1830. (30) If these are averaged, this gives a figure of only 28.2 causes per year per court, and would suggest that the courts were nearly defunct by this date.

The historiography of the church courts, focusing on limited aspects of their work and on the period before 1640, has led to conclusions that are not entirely valid for their overall work and significance. The dearth of research on ecclesiastical courts in the late seventeenth and eighteenth centuries with a lack of understanding of the wider function of these institutions, has led to some premature and mistaken conclusions. Martin Ingram's work on the courts in the diocese of Salisbury examined only a small part of their business,

focusing on sexual behaviour and marriage. (31) He argued that the church courts, although re-instated after the Restoration, had declined dramatically by the late seventeenth century, and suggested that 'by 1700 the spiritual jurisdiction was only a shadow of what it had been a few generations earlier'. (32) His assessment was based on the extrapolation of his work on a limited area of the court's business to make a judgement on their overall work and significance.

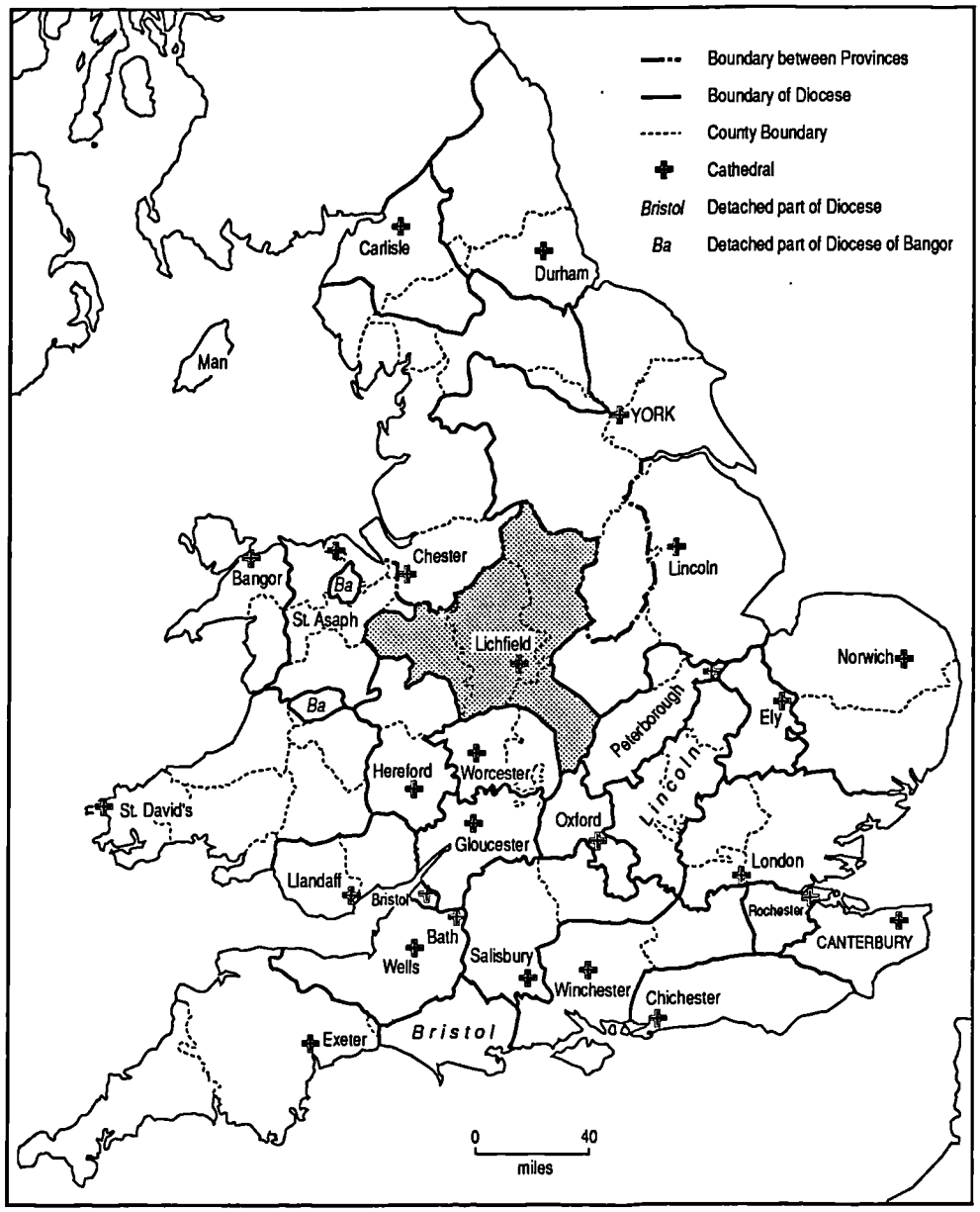
John Spurr has remarked that while 'shafts of scholarly light have illuminated the working of some courts in a few dioceses, most of the church courts of Restoration England remain unstudied and consequently all generalizations about them remain fragile. No doubt one reason for this neglect by historians is the difficulty of the work; the church courts did not keep neat records, nor did they all follow the same procedures, and the protracted cases are difficult to trace to a conclusion through the surviving documents. As a result, even such basic issues as the volume of business conducted in the church courts are unclear.' (33) Despite his serious caution, this remark also illustrates a lack of understanding of these courts. Their records were, in many cases, well kept for the period - certainly better than those of the lesser civil jurisdictions. The main problems lie in access to the records, their organisation and the fact that court procedures are not well understood. The concept of tracing a cause through to a conclusion is also a twentieth century one, and often not appropriate to the work of these courts. The most satisfactory conclusion to a cause was usually not a verdict but an informal and amicable settlement. Unfortunately, there was no administrative procedure to record such settlements. (34)

Roy Porter has also painted a picture of decline, stating that church courts were 'waning during the eighteenth century, and 'reduced to a husk'. (35) Lawrence Stone has remarked that 'In the late seventeenth and early eighteenth centuries, ... the church courts went into a startling decline. By the early eighteenth century they were no longer in a position to enforce upon a recalcitrant population the old moral code by means of officially initiated prosecutions and the infliction of shame punishments. To make matters worse, the traditional use of private informers fell into disrepute'. (36) In fact research on the Societies for the Reformation of Manners has demonstrated that the private informer was alive, well, and very busy, during the first half of the eighteenth century. (37) The concepts of a 'recalcitrant population' and an 'old moral code' will be discussed in Chapter One.

There is clearly a need to examine the work of the eighteenth century church courts in greater breadth and depth, and to examine their functions objectively. John Walsh, C. Haydon and S. Taylor have seen the traditional view on the collapse of the church courts as in need of modification. (38) The work of Jones, Morris, and Till on the late seventeenth and early eighteenth century courts has revealed varying degrees of activity at different periods in different courts. Till's work, carried out on the papers of the York consistory court, has led to the assumption that these courts were an anachronism and virtually disappeared in the early years of the eighteenth century. (39) But in spite of evidence for the collapse of the Ely courts too before the end of the seventeenth century, (40) it has been demonstrated that immorality causes continued to be important in Carlisle in the 1730s and in Lancashire into the 1770s. (41) Morris too has shown that the Bath and

Wells courts continued to function throughout the eighteenth century. (42) This thesis will demonstrate that the Courts of Lichfield, re-established quickly after the Restoration, maintained a substantial volume of business throughout the eighteenth century.

The data upon which this thesis is based has been derived from the cause papers of the consistory court of the Bishops of Lichfield and Coventry. The extent and location of the diocese is shown on Map. 1.



Map 1. The Dioceses of England between the Reformation and the nineteenth century

The cause papers were calendared between 1739 and 1769 and demonstrated not only a good rate of survival but a viable number of causes for analysis. The remaining documents generated between the years 1680 and 1830 were then calendared. No attempt was made to link these with the surviving and well maintained Court Books. It must be borne in mind that the use of cause papers alone tends to underestimate the amount of summary business heard on each court day. Each identified cause was listed onto an Excel spreadsheet on a Macintosh computer. The information extracted included the date of the cause, the type of cause, the names of the plaintiff and defendants, their occupations where known, and the parish of origin (that of the plaintiff in instance causes and that of the defendant in Office causes). A graph generated from this list was used to determine three twenty year sample periods for further analysis. The years selected were 1700-1719, 1770-1789 and 1810-1829. They were selected by virtue of their increasing or declining numbers, particularly for the nineteenth century sample.

The causes within each period were further sorted into the five main categories of court business, which included Office, Tithes, Matrimonial, Defamation and Testamentary causes. Each of these areas of business was analysed in terms of the sex of the plaintiff, their settlement origin and, for the two later periods, their occupations. (43)

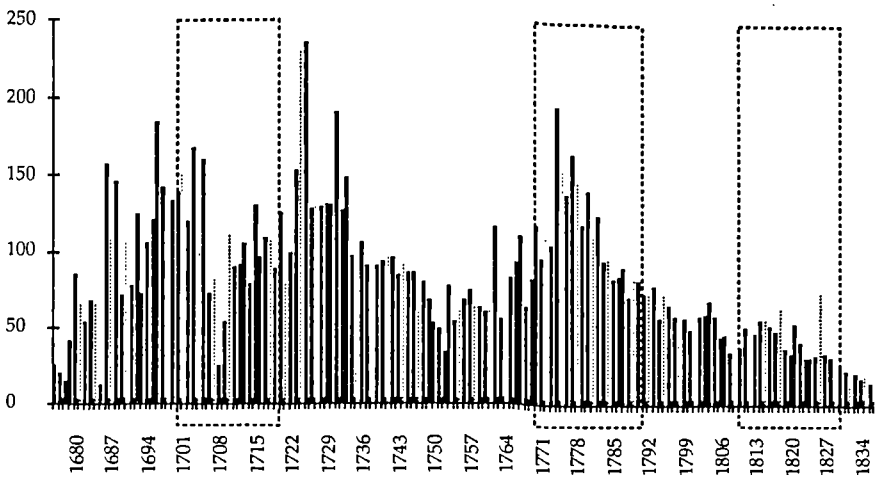


Fig. Int.1 Annual number of causes passing through the Lichfield Consistory Court, 1680-1830, and the distribution of sample periods.

The types of settlement from which the causes originated were separated into urban and rural areas. The urban areas used comprised the three county towns of the diocese. Causes from Birmingham and Coventry were both listed as separate categories due to their exceptional growth rates. Other towns, listed as market towns by virtue of thir growth and rising importance, were differentiated from the remaining rural areas. (44)

The primary purpose of this thesis is to re-evaluate the work of the church courts through the cause papers of one major court. Earlier writers have identified other factors in the background of many disputes heard by the church courts, and the Lichfield evidence confirms that these may have been more important in the work of the courts than has usually been thought. The courts may well have been 'consumer-led' rather than 'church-driven', at a time when arbitration

and negotiation were common methods of solving disputes in the community.

* * * * * * * * *

The consistory court was the predominant ecclesiastical court of the diocese in the eighteenth century, sitting fortnightly throughout the year. The fixed archdeacons' courts do not appear to have been functioning after the turn of the eighteenth century. However, both Bishop and Archdeacon carried out their visitational duties at the appointed times. (44) Other ecclesiastical jurisdictions included those of 'peculiars', areas not under the jurisdiction of the Bishop of the diocese in which they lay. The busiest of these was the court of the Dean of the Cathedral, who held his court in the south transept of the Cathedral. The other element of ecclesiastical administration was that of the granting of probate. The archdeacons' courts, those of the peculiar jurisdictions, visitation courts as well as the probate courts of the diocese have all been considered to be outside the remit of this thesis.

In order to understand the nature of the work of the consistory courts, case studies will be presented and their significance discussed for each type of instance business. Where possible the work of the eighteenth century courts will be compared with that of the post-Reformation courts, to identify changing patterns of business, which would reflect the changing concerns of the courts and their clientele.

Chapter 1 explores the general administration of the church courts, to see whether the accusations of inefficiency, corruption and

lack of punitive sanctions in the early modern period can be applied to their work in the eighteenth century. The rules of the courts, legal costs and punitive resources will be used to explore the management of the ecclesiastical courts in the dioceses of Gloucester, Worcester and Lichfield.

The work of the Lichfield consistory court will be analysed in Chapter 2 to demonstrate the range of both the instance and office business of an ecclesiastical court in the eighteenth century, the hierarchy of the courts in the diocese, and the location of the consistory court. The roles of the court officials, and the overall volume of business will also be discussed.

Five chapters examine the major types of business, beginning with the work of the Office of the Judge in Chapter 3. This included moral misdemeanors, often heard by summary pleading - the 'public and notorious' cases of fornication and adultery. The chapter also addresses the contentious question of the decline of these causes: did they decline in the late seventeenth century or continue into the eighteenth? Alongside these salacious causes, there was a wide variety of more mundane administrative fare, including unpaid church dues and requests for faculties.

Chapter 4 examines the extent and distribution of disputes over tithes and Easter Offerings in the eighteenth century. These were brought by both clergy and laity as instance business and heard in plenary form, although few were taken as far as a sentence. Studies of 'tithe-gatherers' account books and case studies are used to illustrate the complexity of the tithing system over the period.

The smallest category of business in this period, matrimonial disputes, is discussed in Chapter 5. These included disputes over both the formation and break-up of marriages. Separation causes will be considered in the light of the work of Lawrence Stone on divorce among the upper echelons of society. (45) The social origins and sex of plaintiffs in these causes will be discussed, and some of their problems reviewed in a short series of case studies.

One of the larger categories of business, defamation, has been discussed at length for the early modern period, both from a feminist perspective, and as part of an overview of the sexual business of the courts. (46) In Chapter 6, the defamation causes of the Lichfield courts will be considered, with reference to the sex and occupations of both plaintiffs and defendants and their settlement origins. The high proportion of married women plaintiffs noted in the early modern York courts has been shown to continue in the London consistory courts. (47) This chapter will consider how far the causes at Lichfield fit the same pattern.

The obligatory use of the church courts for disputed wills and legacies is reflected in the proportion of testamentary business in the Lichfield courts, discussed in Chapter 7. The work of the consistory court was totally separate from that of the probate courts, and there has been very little examination of this element in the work of the courts. These causes were another group that could be heard as Office or instance business, depending upon the type of cause. 'Rash administration' of an estate was a moral offence and thus heard as Office business, whereas a disputed will or inventory was an instance

cause and heard in plenary form. Examples of the types of problems negotiated in the courts will be provided.

The work of the courts is summarised in Chapter 8, which then considers the chronology and process of decline. Ingram posits three major reasons for the decay of two archdeaconry courts in the Salisbury diocese, arising from his study of defamation, sexual and marital causes. He argued that the problems of illegitimacy and hence sexual promiscuity were less at the end of the early modern period, and concluded that ecclesiastical censure became less important. He also suggested that the imprecise nature of presentments was in conflict with the increasing specificity of allegations in the civil courts. Thirdly, the lack of control over protestant dissent and catholic recusants, encouraged by the Act of Toleration, further eroded the disciplinary sector of court business. (48) These factors may well explain the demise of the types of business that Ingram was examining, but these included only a very small part of the overall work of the courts. The reasons for decline in other diocesan courts may lie elsewhere and in different periods.

Walsh, Haydon and Taylor have suggested that the 'pertinacity of the church courts through the eighteenth century may say something about the resilience of the church's administrative system; it certainly offers evidence for continued respect for the policing authority of the church and its role as a focus for community values'. (49) The resilience of the administrative system cannot be denied, and this thesis will seek to show that the Lichfield court continued to play a significant role in the moral regulation of the community, not superimposed from above but from within the community itself.

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1. James A. Brundage, Medieval Canon Law (1995), p.5.
2. Halsbury's Laws of England, 3rd edn. (1957), p.485, quote from Laws of Edgar, Edgar III c.5.
3. Richard Burn, Ecclesiastical Law (1797), I, p.xi, quotes this precedence: 'The ecclesiastical law of England is compounded of these four main ingredients; the Civil law, the Canon law, the Common law, and the Statute law. ... ... Where these laws do interfere and cross each other, the order of preference is this: The Civil law submitteth to the Canon law; both of these to the Common law; and all the three to the Statute law'.
4. Ralph Houlbrooke, Church Courts and the People during the English Reformation, 1520-70 (Oxford, 1979).
5. 24 Hen. 8 c.12.
6. 25 Hen. 8 c.19.
7. W.S. Holdsworth, A History of English Law, I (1922), p.605.
8. Holdsworth, History of English Law, p.592.
9. A Notary Public was originally a scrivener who wrote out documents. Burn, in 1797, quoted the definition of the office given in Ayliffe's *Paraergon* (1726) as one 'who confirms and attests the truth of any deeds or writings, in order to render the same authentic'. The completion of their training was recorded in the Lambeth Palace *fiats*.
10. 18 & 19 Vict. c.41.
11. 20 & 21 Vict. c.77, ss. 3,4 (repealed).
12. 20 & 21 Vict. c.85, ss. 2,4 (repealed).

13. 23 & 24 Vict. c.32, s. 1.

14. Houlbrooke, Church Courts and the People; R.E. Marchant, The Church Under the Law (1969); R.E. Marchant, The Puritans and the church courts in the Diocese of York, 1560-1642 (1960); J.E.C. Hill, Economic Problems of the Church (Oxford, 1956); J.E.C. Hill, Society and Puritanism in Pre-Revolutionary England (1964); F.D. Price, 'Gloucester Diocese under Bishop Hooper', Transactions of the Bristol and Gloucester Archaeological Society, lx, (1939); F.D Price, 'The Abuses of excommunication and the Decline of Ecclesiastical Discipline under Queen Elizabeth', Economic History Review , lvii, (1942); F.D. Price, 'An Elizabethan Church Official - Thomas Powell, Chancellor of Gloucester Diocese', Church Quarterly Review, cxxviii, (1939); F.D. Price, 'Elizabethan Apparitors in the Diocese of Gloucester', Church Quarterly Review, cxxxiv, (1942); F.D. Price, 'Bishop Bullingham and Chancellor Blackleech: A Diocese Divided', Trans Bristol and Gloucester Arch. Soc., xci (1972); F.S. Hockaday, 'The consistory court of the diocese of Gloucester', Trans. Bristol and Glos. Arch. Soc., 46, (1924).

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Laura Gowing, 'Gender and the language of insult in early modern London', History Workshop Journal, 35 (1993); A.L.Erickson, Women and Property in Early Modern England, (1993); Tim Meldrum, 'A Women's Court in London: Defamation at the Bishop of London's Consistory Court, 1700-45', The London Journal, 19, 1, (1994); Laura Gowing, Domestic Dangers: women words and sex in early modern London (1996).

17. F.S. Hockaday, 'Consistory court of the diocese of Gloucester'.
18. F.D. Price, 'The abuses of excommunication'.
19. F.D. Price, 'An Elizabethan court official - Thomas Powell'.
20. The majority of the church court records only came from their diocesan registries into record offices following the Local Government (Records) Act of 1962. Some collections of cause papers are still unindexed and unavailable for consultation, whilst others await conservation prior to their being made accessible. The court records contain two major data sources. The first and most compact are the act books of the court in which are recorded all the legal acts 'had, sped and done' in the court on each day's session. The cause papers are difficult to use unless the researcher is familiar with the legal processes of the courts. Without a working knowledge of the court system the voluminous cause papers can be difficult to interpret. They are also the least likely of the two sources to be accessible due to the lack of indexes.
21. Hill, Economic problems of the church.
22. Houlbrooke, Church Courts and the People.
23. Brian Woodcock, Medieval ecclesiastical courts in the diocese of Canterbury (1952).

24. Frank G. Emmison, Elizabethan Life: Disorder (1970); idem., Elizabethan Life, morals and the church courts (1973); idem., Elizabethan Life: home, work and customs (1976).

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28. Barry Till, 'The Consistory Courts of York', typescript manuscript in the Borthwick Institute, York.

29. P. Morris, 'Defamation and sexual reputation in Somerset, 1733-1850', (Ph.D., University of Warwick, 1985).

30. The Special and General Reports made to his Majesty by the Commissioners appointed to enquire into the practice and jurisdiction of the ecclesiastical courts in England and Wales (1832).

31. Ingram, Church courts, Sex and Marriage, p.372.

32. Ibid., p.374.

33. J. Spurr, The Restoration Church of England, 1646-1689 (Yale, 1991), pp.209-210.

34. The phrase *'quietus est'* was used to record probates that had been successfully completed, but there was no equivalent used on consistory cause papers.

35. R. Porter, English Society in the Eighteenth Century (1986), pp.188, 298.

36. Lawrence Stone, The Road to Divorce: England 1530-1987 (Oxford, 1992), p.232.

37. T. Isaacs, 'The Anglican Hierarchy and the Reformation of Manners, 1688-1738', Journal of Ecclesiastical History, 33, 3, (1982).

38. J. Walsh, C. Haydon, and S. Taylor, The Church of England c.1689-1833 (Cambridge, 1995).

39. Till, 'Administrative system'.

40. Walsh *et al*, The church of England, p.5. However, the eighteenth century cause papers have been found to contain much instance business. Perhaps this apparent collapse relates to a similar phenomenon in other courts during the last decade of the seventeenth century, prior to the re-emergence of instance causes in the following century.

41. Walsh *et al.*, The Church of England, p.6.

42. Morris, 'Defamation and sexual reputation'.

43. Settlement types were grouped as follows:

Urban areas: Birmingham, Coventry.

County towns: Derby, Shrewsbury and Stafford.

(Warwick was not in the diocese of Lichfield and Coventry)

Market Towns:*

Derbyshire: Alfreton, Ashbourne, Bolsover, Chesterfield, Dronfield, Winster, Wirksworth.

Shropshire:, Ellesmere, Market Drayton, Newport, Tong, Wellington, Wem, Whitchurch.

Staffordshire: Abbots Bromley, Betley, Burton upon Trent, Cheadle, Leek, Newcastle under Lyme, Stafford, Stone, Tamworth, Tutbury, Uttoxeter, Walsall.

Warwickshire: Atherstone, Coleshill, Kenilworth, Nuneaton, Polesworth, Rugby, Solihull, Southam, Sutton Coldfield.

* List derived from Thirsk, J. Ed., Agrarian History of England and Wales, Volume V (Cambridge, 1984).

44. The Bishop made his visitation in the first year of his office and then every third subsequent year. The Archdeacon visited his archdeaconry every six months, usually in the spring and autumn in the Lichfield diocese where individuals were cited by parish within each deanery. The Bishop's court took precedence over that of the Archdeacon when visitations coincided. Ongoing work on two peculiar courts in the diocese would suggest that these courts also held a fixed court day and also held visitations.

45. Stone, The Road to Divorce.

46. Gowing, 'Gender and the language'; idem., Domestic Dangers.

47. Meldrum, 'A Women's Court'.

48. Ingram, Church Courts, Sex and Marriage, p.372-3. Presentments for immorality were usually made at visitation, and did not form part of the everyday work of the static archdeaconry courts. In the eighteenth century Lichfield courts immorality causes were generally heard as summary business, generating only a citation, and an occasional penance.

49. Walsh *et al*, Church of England, p.6.

CHAPTER ONE : THE EFFICIENCY AND PROBITY OF THE EIGHTEENTH CENTURY COURTS.

Church discipline is for the honour of God, for the safety of religion, the good of sinners, and for the public weal, that sinners may not run headlong to ruin without being made sensible of their danger; that others may see and fear, and not go on presumptuously in their evil ways; that the house of God may not become a den of thieves; and that judgements may not be poured down on the whole community.

Thomas Wilson, Bishop of Sodor and Man, (1722). (1)

Introduction

Earlier writers on the spiritual courts in the early modern period, particularly Hill, have argued that they were slow, inefficient and that their lawyers exploited the intricacies of the law to extract the maximum financial benefit from their clients. (2) Their system of punishments was inefficient and often derided. The courts were always open to criticism from religious radicals, as well as the parishioners summoned to appear before them, for their duty of 'moral correction' was never a popular one. Their ability to discipline effectively has also been questioned by modern historians, particularly following the work of Douglas Price in the late 1930s and early 1940s. (3) The professional integrity of the courts has also been criticised. The level of criticism partly reflects the period on which much of the work on the courts has been carried out, between the Reformation and the civil war, a period of religious and political turmoil, generating much contemporary controversy. Even during this period however, Marchant and later scholars including Houlbrooke and Ingram have claimed that the courts were in fact relatively efficient. (4) The work of

the church courts in the period after the Restoration is only now slowly beginning to be explored, in a piecemeal fashion, as the value of the material comes to be better appreciated by social historians. The honesty of their proctors, the costs of causes, and the efficiency of the system in terms of business and punishments, all remain to be explored in detail. (5)

Two key issues will be examined in this chapter, the courts' alleged inefficiency and their lack of punitive sanctions: the documentary sources enabling this include the rules of the courts and their tables of fees. The types of punishment and their efficacy can be assessed from other sources, including the excommunication books, schedules of penance, contemporary poetry, letters and other ephemera.

Corruption has left no evidence in the Lichfield court records. If it existed at all, it was on too small a scale to attract any contemporary comment. The personnel of the courts were often respectable individuals, 'bred up to the law', although early squabbles have been found in cause papers which will be discussed in Chapter Two. These are professional disputes and personal in nature. The tombs of many of the proctors are within the Cathedral itself at Lichfield, and no evidence has been found of shady dealings by any of these eighteenth century proctors. They ostentatiously followed Floyer's Proctor's Practice soon after it was published in 1744. The Deputy Register of the Chester court, Henry Prescott kept extensive diaries which show him to be a deeply religious figure. (6)

The efficiency of the courts

Three sets of rules of consistory courts have been located for the period. The rules of the eighteenth century courts demonstrate an awareness of previous failings. They provide an invaluable guide to perceived inefficiencies, and the efforts made to remedy them. The aim of all three surviving sets of rules from the eighteenth century would appear to have been to cut down delays in court proceedings, by imposing strict time limits on the production of certain documents, financial penalties for delay in taking action both by the proctors and their clients, and reducing any possible opportunities for confusion and collusion by defining procedures.

The rules of the courts and tables of fees should have been displayed in every consistory court and its associated Registry. Rules have survived from the Worcester courts (7) and Hockaday has published the surviving rules from Gloucester. (8) The rules of the Lichfield courts have recently been located in an undated notebook in the Worcester Record Office. (9) Hockaday's work on the consistory court of the Diocese of Gloucester includes a copy of the rules of the court, originally published in September 1697, the contents of which bear a strong resemblance to those from the Worcester consistory court. The Gloucester rules may in fact have been copies from the Worcester rules which were published in the preceding April, having been issued under the *aegis* of the Bishop. The Worcester rules were laid out in numbered paragraphs and under specific headings. The Gloucester rules were not laid down, as one might expect, by the Bishop, but by the Chancellor of the diocese 'for the better and quicker Management of Causes in the Consistory Court there'; implying either a response to

criticism of the inefficiency of the courts or simply an increasing amount of court business. The Gloucester rules were simply set out in paragraphs, with no separate headings. Both sets of rules were almost identical and the minor, but significant, differences will be discussed during the consideration of the implications of these documents. The most interesting of the three sets of rules is that relating to the Lichfield consistory court. (10) This would appear to have been copied into a notebook in the late seventeenth century and the heading runs as follows:

> 'Rules Agreed upon by the Official Regester and Procurators of the Consistory Court of the Rt Reverend Father in God, Thomas Ld Bpp of the Diocess of Lichfeild and Coventry to be observed from time to time in the Procecution of all Causes in the sd Court'.

Bishop Thomas refers to Thomas Wood, bishop until his death at Hackney in 1692. He was absent from his see to such an extent that he was suspended by the Metropolitan between July 1684 and May 1686, following legal proceedings for neglect. In his absence the see was in the hands of the Metropolitan, Archbishop Sancroft, whose interest in the efficiency of the church courts has been discussed by Martin Jones in his thesis on the post-Restoration courts. (11) It is possible that these rules were drawn up by the court officials to ensure the proper running of the courts, and therefore pre-date those of Worcester and Gloucester. Certainly business at Lichfield began to pick up by 1690 and continued to thrive after this. This set of rules is by far the most complex, obviously written by lawyers, and tends to concentrate on legal technicalities.

Rules of the Courts

These rules would have been formulated in response to real problems in relation to the practice of the courts, and examination of the rules of the Gloucester, Worcester and Lichfield courts identifies fourteen main points which were obviously causing contention. Only the salient points of these rules have been examined here. It is always difficult to know to what extent such rules became a part of the *modus operandi* of the courts, but in this case the condition of the Gloucester document gave the impression of 'having been publicly exposed for a long period', (12) which would imply that the rules had been at least visible to all concerned. They is no reason to suppose that they were not put into effect.

The *minutiae* of court procedures are revealed by these rules. They give much more information than is obtainable from the standard law books of the period, which are, in the main, concerned with general legal procedures and precedents. The day to day management problems which these rules indicate would not be reported in any other source material, nor would these be immediately apparent in either the Act Books or the cause papers.

The amount of information in each set of rules varies. The Worcester rules contain 28 numbered paragraphs, those from Lichfield 31 (with an additional five rules relating to *ex officio* business) and finally, those from Gloucester contain approximately 14 rules, although the paragraphs were not numbered, and some phrases should perhaps be interpreted as being rules.

Citations bearing the seal of the Chancellor, his official principal or Vicar General and relating to office and instance causes were to be accompanied by a Note English [describing the contents of the citation in English prior to 1733], to be handed to the party cited by the apparitor, or left at their 'usual place of abode'. (13) At Lichfield, on 28 January 1718, it was ordered in the court book that 'All Processes [legal documents] that shall be taken out in the name and under the seal of the Chancellor shall be served and executed by his own Officers and no other person or persons'. (14) If the citation had been returned correctly, then failure by the individual cited to appear in person, or by a representative proctor, on the stated court day would result in immediate excommunication unless the judge gave reasons for the delay. This form of protocol with citations was certainly used at Lichfield, although no evidence has been found for excommunication being delayed.

Where a defendant appeared in court at Worcester or Gloucester, and the citation had not been returned in the correct manner, the defendant could be dismissed with costs, 3s.4d. if a 'Citizen', and 5s. if a 'countreyman' living five miles from the court, excepting the cost of the monition. (15) This was justified on the grounds that the plaintiff might not have been able to proceed due to the incorrect protocol being observed, and it was probably included to ensure that citations were duly returned on time. This element of differentiation between town and country people and the distance they had to travel seemed to play an important part in costs and expenses. If any individual was incorrectly cited or the document was 'mistaken in any particular', then expenses would be paid, in theory as above, to those so treated. At

Lichfield, the defendant could be dismissed with 6s.8d. costs regardless of where they had travelled from. (16) The level of costs probably reflected the vast size of the diocese, people travelling into Lichfield from the Welsh borders and the mid-Pennines, close to Manchester and Sheffield.

The proctors at Worcester were permitted to draw up their own citations but these could only pass the seal if they had been signed by the Register or his deputy. (17) At Gloucester, the Register also had to sign the citations, even if the proctors had drawn them by themselves, and the fees were still payable to the Register. (18) The Lichfield citations in the cause papers were also signed by the proctor, and the Register.

To ensure that the libels (an itemised list of plaintiffs complaints to be answered by the defendant) were prepared quickly and efficiently, they had to be available on the day of return of the signed citation at Worcester and Gloucester. (19) If they had not been completed, the defendant could again be dismissed as before, with 3s.4d. and 5s. costs at Worcester or 6s.8d. being allowed for a journey of 20 miles and 10s. for a journey of 30 miles at Gloucester. The Worcester courts also included the statement that no abbreviations or *etceteras* were to be used in libels and allegations - obviously these had been used to excess at some point and had led to confusion. (20)

Proctors were employed to act in place of either party in a cause, in the manner of an attorney. This had obviously been open to abuse and it was felt that all proxies (21) should be proved in writing in both the Worcester and Gloucester courts. (22) The penalties at Worcester

for omission were superficially heavier, and the time period shorter for registering them. Here there was a fine of 5s. payable if the proxy was not in the hands of the Register by the next court day after *contestio litis* had been declared. At Gloucester, proctors were allowed to prove their proxy by the second court day, which usually gave them an extra two weeks in which to act. (23) Here they were under pain of paying 1s. to the poor or to 'stand silenced as to the Cause', the latter being a severe penalty, depriving the proctor of potential income from his appearance in court.

The answers to the libels were to be given by the defendant either in the affirmative or negative in court on the same day that the libel was admitted - in other words there was to be no procrastination in any of the courts. (24) In Lichfield, the answers had to be full and plain; again confusion must have arisen in the past. (25) However, if a confession was made the next court day, or a tender made in payment of unpaid tithes, there would be no penalty to the party confessing, which would give a short pause for thought. This measure would, again, encourage the speedy conclusion of a cause and was identical in both the Worcester and Gloucester rules. Any answer that was considered insufficient would result in a charge of 5s. in both courts. Any exceptions to answers that were adjudged to be time-wasting would also bring a charge of 3s.4d. at Gloucester and the charges for the court day at Worcester (which would amount to the same cost). (26) Any answer in writing had to be given to the Register's office three days before the court day under pain of 12d. at Worcester, but there was no such ruling at Gloucester. (27) If a confession had been made the defendant was allowed one further court day to make any further plea and the cause was concluded, sentence being passed the following court

day in both courts. Some allowance was made for distance in the Lichfield courts whereby a defendant living more than twenty miles from the court was allowed an extra court day in which to respond.

The term probatory was a period of time allowed for the parties to gather the necessary evidence for the proof of their cause and this had obviously been extended for too long in some courts. (28) At Worcester, this was to extend from the day that the defendant gave an answer until the third court day following (six weeks later), during which time a compulsory should have been decreed, calling their witnesses into the court. A charge of 1s.4d. was made for 'retarding the *processus*' when unnecessary extensions had been sought, without good reason being given to the judge. The Gloucester courts proposed a charge of 1s.6d. and 6d. to be given to the poor. (29)

At this point the Lichfield rules relate to Commissions for examination of witnesses who were unable to come into court to give their evidence. (30) In such a large diocese this was an important issue. The permission for this had to be requested at the court day following the answers and had to name a time and place for the Commission to examine the witnesses and also to name those who would form the Commission, notice having to be given to the defendant's proctors a week before. If this had not been done, a further week was allowed to name the Commissioners. This action was probably taken in view of the size of the Diocese where it was occasionally necessary to work in this way, especially where a number of witnesses had to be examined in a cause.

In both the Worcester and Gloucester courts, proctors were to be present when witnesses gave their depositions outside court hours. Three days' notice was to be given of the names of the witnesses and the times at which they were due to appear. However, where witnesses were coming to court from some distance or presented any other difficulty, six days' notice was required so that their depositions could be heard at such time as was agreeable to the Register, 'that it may not be inconvenient to him in respect to other Business'. (31) The interrogatories at Gloucester then had to be ready within 12 hours of the production of the witnesses. It was then necessary for the plaintiff to propound all acts, unless the defendant wished to make some form of exceptive plea. A copy of this had to be given to the plaintiff's proctor, and if it was rejected the cause was to be concluded. If the allegation was admitted to court, then only two court days were to be allowed for its proof after the plaintiff had responded. All further actions were only allowed two courts days for completion. This would, in some causes, have been very difficult and tend to reduce the length of the action - contacting witnesses and the drawing up of documents would have had to be done very quickly.

The expenses of the parties were to be 'taxed' (to be examined, and items disallowed if necessary) in the sentence, and a day appointed for their payment, along with a decree for a monition. The monition for the payment of the principal sum and taxation was not to be taken out and sealed until 15 days after the sentence had been pronounced, to allow any appeal from the 'losing' side. (32) This would avoid any accusations of impropriety by the proctors.

Small actions, that is those brought for small tithes, church levies and wages of clerks were to be heard by summary pleading, and witnesses were to be heard in court - 'except that they shall prove clamorous'. If this were the case, then the evidence was to be taken down on the next court day at a time set by the judge, so that the Register could take down 'the substance and effect of the Testimony'. (33) At Lichfield all causes of this type relating to sums under 40s. were to proceed summarily and the examination of witnesses was to be carried out '*viva voce*' if the judge thought it appropriate. (34) Again, this was another method of speeding up the process and saving the costs of writing down the statements. This was a most unusual break with the normal procedure of the church courts but served, like the proposal at Gloucester, to enable causes of defamation 'where the matter appears frivolous' to be heard summarily. (35) Again the effect of this ruling would be to increase the number of causes passing through the courts and the speed with which they passed. The Worcester court rules also refer to 'Table Fees' for the examination of witnesses in private. (36) Defamation causes between 'poor persons' at Worcester were also be be heard summarily, if the judge saw good reason for this. (37) This would ensure that causes passed quickly, and cheaply, through the courts. Causes involving witnesses tended to become expensive, and thus beyond the range of some individuals.

The rules relating to the course of law after presentment provide one of two examples of apparently deliberate creation of business for the proctors. (38) In the summary business of all three courts, fees had to be paid for the citation, and if the cause was to be contested then a proctor of the consistory court was to be retained to prosecute the cause.

The only example of regulation of probate business at Worcester was concerned with the granting of administration of intestate estates, which was not to pass the seal until ten days after the death of the intestate, unless the circumstances were exceptional. (39) Administration had to be offered to the next of kin before it could be allotted to a creditor, who had to apply for this through a proctor of the court. A *caveat* could be entered on three days' notice at Lichfield. In the same courts, those seeking an 'administration with will attached' had to exhibit a copy of the will taken from the court where it had been proved, or a copy of the grant of administration, subscribed by either the Register or a public notary of the office where this had taken place. (40) Only those parties involved in legal action or their proctors were permitted to be involved in testamentary matters, and the administrators of an estate where the inventory was worth over £10 could only proceed where a proctor had signed the *fiat* to prevent any fraud. (41) At Lichfield, proctors had to exhibit their proxy before any renunciation of probate could be admitted.

It was recognised that 'Grievances may be prevented that are often occasioned by mistakes' (42) and proctors had to keep a record book of all the proceedings on each court day. Every error would have cost 6d. to be given to the poor. Any errors arising were to be corrected by the Register and the judge of the court. Consultation with adverse proctors was also advised at Worcester when drawing up acts of court to add their 'dissents and protestations' before any decree was to pass the seal.

Excommunications were not to pass the seal until the next court day, the charges for the first decree were to be paid to the Register before

the second decree was passed. (43) In those cases where the writ of *significavit* was due to be passed to the civil authorities the proctors were not to give notice of it, 'lest the offending part be enabled to avoid the Execution of Justice'. The penalty of suspension could be incurred for this offence, which was one of the few examples of stealth to be found in these records. (44) Failure to pay their bills to the Register could result in a proctor being prevented from practising in the courts. The bills for Acts of Court, decrees and citations all had to be paid for individually by the proctors on the first court day of the month. (45) Proctors were also forbidden from acting in criminal causes, presumably the civil courts, unless they had obtained the permission of the chancellor. Suspension for three months could ensue if this was not given. (46) This is one of the rare occasions when the links between the church and civil courts become apparent.

The conduct of testamentary business was confined strictly to the parties concerned and their proctors at both Worcester and Gloucester, where there had obviously been some problems arising from third parties intervening in these matters. Proctors had to exhibit their proxies before any renunciation of probate was admitted at Lichfield. (47)

Proctors were also charged for the privilege of consulting wills, administrations, or inventories by the Register. They were however, permitted to consult the Act Books of the court without charge, to check on matters pertaining to their work, and the Act Books of many consistory courts are indexed by plaintiff and defendant to assist in this. (48) The proctors were also warned against conducting any business in a by-court except the cause which had been assigned by the judge. By-

days are recorded in Doctors' Commons and the Lichfield cause papers. These were court days assigned by the judge outside the official Law terms - usually within eight days after and two days before the terms, but not the first court days in the Easter or Trinity Terms. They were usually assigned to assist the expediting of causes after the conclusion or before sentence was to be given. (49)

The question of the dates of sitting of the church courts has been in some doubt and these rules stipulate that there to be no sittings at the three great festivals of the church until the octave (eight days after). (50) There was also be a vacation at harvest time, chosen by the judge. At Lichfield, no courts sat in August, reflecting the agricultural character of the diocese. There seems to be no question of the consistory courts sitting merely in the law terms. The Law terms observed by Doctors Commons are listed by Floyer, and would have been used by the Lichfield courts for appeals to higher authority. (App. 1.I) An appeal to Doctors Commons would undoubtedly have caused some considerable delay to the proceedings.

Causes were sent on appeal to the courts of Doctors Commons; a process which required the transmission of the documents. It was incorporated into the Lichfield rules that all but one copy of the Judges Patent, abbreviated forms of proxies and the prefaces and descriptions of acts of court should only be written in full on one occasion, to save time and money. (51) A 'deposit' of 20s. had to be paid to the Register, who also had to inform the judge, prior to the transmission of the necessary documents, which would cover the costs of recovering the documents from the Registry, copying them, sending them by post and re-filing them again.

The office of the Register was of great concern to the Gloucester courts and ignored by those at Worcester whose final concern was with their apparitors. Total exclusion from the courts was threatened at Gloucester if the Register or any proctor acted fraudulently or with malice or defamed the judge or the jurisdiction of the courts. All decrees of the courts, along with excommunications, suspensions and notes of contumacy were to be correctly entered. The Register was to remain completely neutral in his dealings with both the parties in a dispute and their proctors, and in making the acts of court. (52) It was also part of his duty, after Michaelmas every year, to summon all those who had not completed the administration of estates or produced inventories during the year. The probate documents were all to be filed 'so that easy recourse thereunto may be had by all Parties concerned'. Consultations were to take place with the judge monthly to consider all office business and to ensure that all excommunications and citations that had been issued were duly returned. All transcripts had also to be filed, presumably the statements of witnesses and copies of documents. The neutrality of the Register's position was reflected by an out-letter from Chancellor Raines at Lichfield:

'My case ... is to carry myself indifferently towards all persons, particularly those concerned in the courts'. (53)

Raines would appear to have been cultivating a deliberate attitude of detachment from all those concerned with the courts, maintaining an air of total neutrality.

Both courts were concerned to maintain reputable apparitors; those at Worcester were to be 'diligent and faithful in executing citations and exactly careful in their returns'. Any complaint that could be proved against them would result in their being suspended from duty. Their suspension would be lifted after absolution but any further criticism would result in their being 'displaced'. The behaviour of the apparitors at Gloucester had not given cause for concern but their fees were in the hands of the Register who paid them quarterly, or more frequently if requested. If any other individual was employed to serve a citation, the apparitor of the deanery would receive the fee, unless he had failed to deliver it himself. (54)

The complexity of these rules and the extent of the detailed regulation of the courts and their business gives the impression of a highly organised system, trying to increase its efficiency. Of all the rules listed, three elements occurred most frequently. The first was concerned with the speeding of the business through the courts, setting specific time periods for documents to be produced. Secondly, the behaviour and discipline of the court personnel was also defined so that both lawyers and clientele were aware of the standards required. The final element was that of the correction of potential errors to prevent problems arising at a later date.

The rules were laid down, but evidence for their implementation is far more difficult to find. This evidence is scattered throughout the court records, but one outstanding piece of data relating to the running of the Lichfield courts was quoted by the proctors in October, 1778, when they referred back to a statement issued by Doctors' Commons, dated 12 November, 1742. (55) It read:

Whereas it is highly desirous to the fair Practitioner, as well as greatly to the Dishonor of the Profession, that any Proctors, menial Servants, or any other Mean persons should be Employed and encouraged by any Gratuity or otherwise, to hawk or ply for Business or Clients: The said Practice is hereby declared to be Unwarrantable and infamous, and justly deserving of Exemplary Censure; and all Proctors etc are strictly enjoined not to encourage or countenance such Practice in any manner, but carefully to avoid all occasion of Suspicion of the Same in themselves, and to discourage, and prevent the same, as far as may be in all Others

Signed by all the Judges and advocates, at
a meeting in Commons, the 12th of
Novemb: 1742 (56)

Their concern related to events at the probate courts in Coventry rather than the Consistory court at Lichfield but provides a glimpse of the practies of civil lawyers, and the extent of competition for business. The statement was quoted in a letter as a response to an advertisement placed in a Coventry newspaper dated 20 September 1777, in which Mr. John Jones had advertised his services in the probate court, promising that they could be 'transacted upon Equitable Terms'. The letter was addressed to Mr. Chancellor and was signed by all five proctors of the court, and read as follows (note the use of numbered paragraphs as in a libel):

'The above well-Regulated Rules are laid down, and have beene extracted from a Publication of Mr. Floyer, on the Practice of the Gentlemen of our Profession, in the Commons, and ever have untill of late, been very Minutely attended by those in your Court. (57) We are very sorry to say that during the Course of our Attendance upon the Probate Courts, for 18 Months past, some very Indecent and ungentleman-like methods have been pursued, in order to inveigle Clients at those times, to the great discredit of our profession, as well as injurious to the fair Practitioner, exclusive of the Cavils, and other disagreeable consequences that arise from such a proceeding between parties. These flagrant Practices have been particularly Noticed, by many respectable Attorneys, in different parts of the Diocese, who have suggested the same to Us.

In order to put a Stop to them for the future We request that the Chancellor will be pleased to lay Us, under the following restrictions

1st That no Proctor, at a Probate Court, shall suffer his Clerk, or employ any other person, to ply in the Streets, Gate-ways, or any place whatsoever for Clients nor shall he himself be guilty of any such Practice

2nd That each Proctor and his Clerk, shall keep his Seat in the Court Room during Court House, and not be suffered to leave the Room except to attend the Surrogate, to have parties Sworn, and other necessary Occasions, so as no Client is picked up by him, or them, in such absence

3rd That no Proctor shall call, entice, or suffer to be called, or entice to him any person who shall enter the Court Room, in order to

have his Business done by him, nor ask him for his Papers till he has fixed on the Proctor he means to Employ

4th That all business shall be transacted Openly and fairly in the room appointed for the purpose - And these rules to be strictly observed under pain of your Utmost displeasure,

(Signed) Jno Fletcher
Will: Buckeridge
Geo Hand Junr
G Hand
W Jackson

20th Octr 1778 In Court'

Their reasons for waiting thirteen months until making some formal complaint are not known, especially when they had observed the behaviour in question for a year and a half.

The out-letters of Richard Raines, Chancellor of the diocese of Lichfield, dating from 1683 to 1689, are also revealing not only for the breadth of legal problems discussed but also for incidental information relating to the operation of the courts. In a letter to an unknown individual in 1683 he remarks:

> I am amazed at the base practices of the Proctors offering frivolous allegations in causes of defamation. We have no such practices here, they dare not offer it, let me know who they are or indicate as to whom sent. (58)

Only one example of an internal disciplinary enquiry has been found in relation to the Lichfield courts, dating from 1685. It would appear from the surviving depositions that Aden Froggatt, notary public, had acted in a matrimonial cause in one of the archdeaconry courts while an inhibition was in force, imposed on the lower courts during an episcopal visitation. This cause revealed a great many details of the organisation of the two levels of the courts and is further discussed in Chapter 2.

Criticism of the church courts in the medieval period related basically to the honesty and integrity of the proctors or advocates practising in them. Helmholz has put forward a strong case for their honesty and integrity. (59) This argument can possibly be extended to those working in the post-Reformation courts, whose ethical standards can be shown to be high, although still subject to satirical attack. The single piece of evidence from Gloucester of a court suffering from the abuse of power is flawed by the less than critical assessment of the church courts at a time of religious turbulence. More examples of abuse of power may come to hand but they will need to be assessed rigorously in terms of their context. It must be remembered that the Gloucester courts were a creation of the Reformation and lacked a firm basis in operational practice. Parishioners would certainly have felt some degree of concern when the change to a new organisation at Gloucester was announced, and the proctors of Worcester were withdrawn. The work of Price in this particular instance influenced the work of Hill, which in turn has coloured the perceptions of the courts for many years afterwards.

It is difficult in the twentieth century to begin to perceive the religious and philosophical upheavals of the Reformation. By the eighteenth century the church courts seem to have become once again a part of the 'taken for granted world', unreported in the newly created newspapers and of little interest outside those parishes from which plaintiffs and defendants came to have their disputes resolved in a private atmosphere. The earlier criticisms related to the greed of proctors in terms of fees and the use of unethical legal procedures to protract causes, including long drawn-out arguments, taking up causes that may have been unjust and taking causes to appeal unnecessarily. As has been shown with the apparitors, the oath which had to be sworn on their admission was complex and included many constraints on their behaviour. A similar device was used with the oath of impartiality which had to be sworn by proctors annually, in the court in the Cathedral. The proctors had to swear to take moderate fees, deal honestly with their clients, plead causes *'in forma pauperis'*, on behalf of those who were worth less than five pounds, and take no fees for doing so. (60)

Causes that were without foundation, or frivolous in any way, were to be given up as soon as this became apparent. The proctors were not to bribe witnesses or encourage them to commit perjury. Nor were they to encourage delays in court procedure or make unnecessary appeals to higher courts. There is no evidence that the proctors of Lichfield behaved in any other manner. One cause has already been cited, that of Aden Froggatt, who had acted in a matrimonial suit during a visitation, and whose behaviour was examined in court and in great detail by his peers.

Proctors and their fees

Alongside criticisms of the courts in terms of corruption and their protracted proceedings, there is the question of fees. The courts were deemed expensive to use. By the eighteenth century the ambiguity of the documents continues in some ways, particularly in relation to the fees charged. Where the extended credit facilities of the period were stretched too far the proctors did not hesitate to use the courts to claim their overdue fees. Whether this can be seen as greed or merely claiming money for work done from an ungrateful client is a subjective point. Certainly their requests for payment would appear to have been met. There is also the question of custom here. If payment was not collected it might be considered to have lapsed, in tithe disputes, and although this has not been written down it may well have been taken into consideration. Disputes between proctor and client were not uncommon and cases could have been sent to a civil court as a claim for debt. In Worcester in 1776, W. Burrell pointed out from Doctors Commons that 'it was not usual for the Court to interfere in Disputes between the Client and his own Proctor relative to the Items charged in His Bill, and that where suits have been instituted in the Spiritual Courts for the fees of Proctors, Prohibitions have been granted'. (61)

It has also been suggested that the restriction on the number of proctors working in any one court could also be seen as financial self-interest. It can also be seen as running in tandem with the amount of work available, or, more importantly that could be accommodated by the ancilliary services, that is the Registry.

The level of fees has reflected on the proctors in terms of their being perceived as 'greedy'. However, as Helmholz has shown in his study of the honesty and integrity of the proctors in the medieval courts, the question of fees when examined in detail shows a slightly different picture. (62) Burn quotes Canon 136, which demands that a table of fees should be placed by the Register in the consistory court itself and another in the registry, 'both of them in such sort as every man whom it concerneth may without difficulty come to the view and perusal thereof, and take a copy of them'. (63) If these tables were not put up the Register was liable to be suspended from office for six months. In view of the lucrative nature of his position, this could cause serious financial harm, as well as wreak havoc on the workings of the entire ecclesiastical court system of the diocese.

The fees demanded by proctors were subject to 'taxation' by the judge, upon the petition of either plaintiff or defendant. (64) The judge would then direct all parties to the Register who would listen to their arguments and report back to the judge. If there were questions that could not be resolved, other proctors would be brought in to discuss the matter. When matters had been discussed at sufficient length, the bill in question would be brought back to the judge, who, when he was satisfied with it, would then tax the bill, usually rounding it down.

Four tables of fees have been examined from a variety of sources and periods. First, the original table of Fees published by Archbishop Whitgift in 1597 and reprinted by Burn. (65) A second table of fees has been located for the Worcester courts (66); Hockaday's work on the Gloucester courts includes a third table of fees (67), and there is a fourth for Doctors' Commons, printed by Floyer (68) and further reprinted by

Burn. (69) There is also an independent listing from Nottingham Archdeaconry Courts, dating from 1733. (70) All of these relate to a plethora of documents and services provided by the staff of the church courts. The immediate impression is the complexity of the data. Whitgift's Table of Fees, standardized and dating from 1597, remained in use probably until the civil war, after which different dioceses probably went their own ways. (71) These tables include fees for a whole range of services, not all concerned with the courts.

Whitgift's fees contained a listing of 43 items payable to the judge, 42 of which were shared with the Register and one also shared with the proctor. Fourteen items were payable to the Register, one which was shared with the proctor and another with the apparitor. Nine items were payable to the proctor and three to the apparitor. Those relating to proctors' services were as follows:

For interrogatories administered 3s. 4d. (+9d Judge: +9d Register)

Fee for proving a will 1s. 0d.

Schedule of excommunication 0s. 6d. (+6d Register)

Proctor for counsel 2s. 0d.

For every Court day 1s. 0d.

Schedule of costs 1s. 0d.

Libel 5s. 0d.

Drawing sentence 3s. 4d.

Drawing any account 3s. 4d.

Drawing a personal answer 2s. 6d.

For any other procuratorial matter 3s. 4d.

The Gloucester table, endorsed September 1722, was transcribed by Hockaday and lists the officers of the court, the Chancellor, the Register, the proctors and the apparitor, separately. (72) The documents for which charges are made include not only cause papers from the consistory court but also those dues payable to the Chancellor, fees for probate, institutions, commissions, marriage licences, letters testimonial, licences to teach and serve cures. The Register's fees relate to the production of cause papers, examinations of witnesses, probate business, search fees in the registry, institutions, letters testimonial, mandates, caveats, commissions, visitation fees and licences. Proctors were entitled to fees on court days, for the writing of inventories, drawing up bills of costs before and after sentence and drawing up the sentence itself. (73) Apparitors were paid for serving citations and a penny a mile for the return journey, and giving notice of visitations as well as a fee from every incumbent at such time. Inductions to benefices also generated fees as did sentences in court, which may have had to be delivered to the parties concerned. Proclamations for creditors also generated income for the apparitor as did their return. Purgation and the oaths necessary also warranted payments to the apparitor. (74) The archdeacon was also paid at every induction to a benefice but he too had to pay his Register, Dean and apparitors for various services. Those appearing before him in office causes also paid a fee which was divided between the archdeacon and his Register.

The table of fees relating to the Nottingham Archdeaconry simply contains an alphabetical listing of the documents produced by that court, and the costs divided between judge, Register and apparitor. (75)

Tables of fees also include a whole range of items not connected with the courts, especially relating to induction of the clergy and visitation fees. These fees are much more complex than simple description would have us believe, the cost of most documents being divided between the Chancellor and Register, and those requiring delivery included a share for the apparitor.

The bill of costs sent out by the proctors usually included a number of items that would be paid to the Register or the chancellor. The items due to the proctors themselves were as follows: (76)

The Proctors Fee the First court Day 2s. 0d.
The fee every other Court day xiid.
For drawing of every Libell or Matter Exceptive 3s. 4d.
For the drawing of every Allegation duplicate in writing 2s. 0d.

These items correspond exactly with those of the Gloucester courts, but do not include the further six items from that court. When the actual amount due to the proctor himself is calculated, it is only a small proportion of the bill.

Most proctors' fees at Doctors' Commons were shared with the Register, although fees for terms in causes and judicial attendance (unspecified) would have been within the proctors' remit. (77)

In summary, three factors, items due to others, costs for work done and their necessity to sue for unpaid bills, have helped to give the impression that proctors were greedy. This belief has been encouraged by the fact that most upaid proctors' bills were claimed through the

ecclesiastical courts as causes relating to Fees, Stipend and Salary at Lichfield. Burn quotes a precedent from the Middlesex archdeaconry where it was shown that prohibitions had been granted in cases where proctors had claimed fees, but in the case in question it was felt 'that the spiritual court may make a better judgement whether the fees in demand are due and reasonable: besides that they are so small, that it would not be worthwhile to bring an action at common law for them; and in such cases this court will not drive the party to the tedious and expensive remedy of an action'. (78) It has been difficult to find any example of corruption amongst the proctors of the church courts. Their fees were closely prescribed in relation to those of others, and often subdivided amongst at least three people. They also had to bear the problems of those suits which had been abandoned by virtue of their successful conclusion outside the courts.

These are extremely complex documents, and they show that the fees charged by the proctors were not all due to them alone. Most items contained elements due to the Chancellor, the Register and the apparitor of the courts, many often not involving a fee to the proctor. From the account books of the Register of Worcester, it would appear that the proctors all had 'accounts' with the Register for various items. Finally, there is the question of security of employment for proctors. This would appear to be obvious, but the fact that they could only earn their court fees on two days a month should be considered, as should the fact that clients could settle their differences out of court at any point in the proceedings, leaving the proctor with work prepared for which payment could not be claimed.

Punishments used by the courts

One of the major criticisms of the efficacy of the courts relates to the system of punishments available. The idea of spiritual correction is totally alien to the twentieth century, but the morality and mores of the eighteenth century were much more accustomed to such a concept.

In 1896, Abbey and Overton briefly discussed the operation of punishments in the discipline of the church courts. They remarked on the fact that 'it was also evident in the first half of the last century [1700-50] that presentments and excommunications were far from uncommon, and that even open penance was not an exessive rarity'. (79) In a sermon delivered to the Society for the Reformation of Manners in 1724, Edward Chandler, bishop of Lichfield and Coventry, stated that 'shame is another principle, interwoven with the constitution of men, which is an anticipation of the judgement, or a sense of the reproach of other men, for having done things immodest, indecent or dishonest'. (80) Chandler obviously still regarded penance as an effective form of correction, in spite of his commitment to secular punishments for immorality offences.

These courts functioned in a different way from the civil courts in that the main punishments of the laity related to the health of the soul. The punishments of the courts before the Reformation included purgation (removed by 13 Chas. II c.2, 1661-2), public penance, excommunication, suspension, interdict, deprivation and degradation. (81) After the Restoration, punishments were reduced to penance, suspension and the lesser and greater forms of excommunication.

The most visible form of correction was that of penance. By the eighteenth century, public penance was usually reserved for those who had committed the more serious sexual offences of adultery or incest, often described as 'public and notorious'. If an individual suspected by common fame were brought before the court and confessed, a penance would have to be carried out. (82) The sinner had to stand in a public place, often in their parish church, or possibly in the local market square, bareheaded, barefoot and clad in a white sheet, holding a white wand. At Lichfield, those performing penance for sexual transgressions often had to appear in three separate churches on three consecutive Sundays. Not only did they have publicly to acknowledge their wrongdoing but also the the 'Scandal given by an evil Example'. (83) The object of the punishment was that the wrongdoer should apologise to the party with whom they had been too intimate, the community at large and to God. Private penance was generally ordered for lesser offences, particularly defamation, where the original words had been spoken in a private place. The offender merely had to appear in church before the cleric and the churchwardens, and the offended party and apologise for their actions. However, in the Lichfield courts in the eighteenth century white sheets were used for penances for public defamation. The custom seems to have varied between courts.

By the eighteenth century the old custom of commuting penance for a small financial payment had all but ceased. The abuses of this system were quoted by Gibson and reiterated in Grey, and there is no evidence for commutation at Lichfield.

While public penance was used to correct those guilty of sexual and defamatory offences, those who refused to undergo penance or failed to attend the courts when requested, were subject to excommunication. This was the most widely used censure of the church courts, which to the twentieth century mind, superficially appears to lack teeth! Excommunication could only be applied to individuals, in other words, corporate bodies could not be subjected to this censure. The reason for this was that there may have been innocent parties within the group, who would not deserve to be punished. (84) Excommunication took a variety of forms, mainly - the lesser and the greater. The lesser excommunication, sometimes described as suspension, deprived the individual from participation in divine worship and partaking of the sacraments. This was the form of censure used against those who refused to respond to citations issued from the courts, those who failed to perform penance, or did not comply with other requests from the court. It meant in reality that the individual was banned from attending church. Not only were they deprived of the sacraments, but their absence would well be noticed and commented upon by the community at large. Their return to the fold could only be obtained, in theory, by absolution granted by the bishop, upon the apology of the individual concerned.

The greater form of excommunication was far more serious, both socially and legally. It also contained a degree of 'contagion', as an incentive to the community to ensure its efficiency. This was aptly described by Bracton as 'leprosy of the soul'. (85) Those under this form of punishment were deprived of the company of other Christians, both in 'society and conversation'. In other words, they were to have no verbal contact with other members of the community,

and were 'sent to Coventry'. If any member of the community had dealings with an individual in this position they too would suffer the same fate. This would have made business contacts and normal working patterns difficult, as well as removing all forms of social contact. Burn lists the legal constraints placed on excommunicates. (86) Clerics were not, of course, to be presented to a benefice, and if such an attempt was made, then the presenter also would be declared excommunicate. Those excluded from the church were unable to act as advocates in court, or even as witnesses. In spite of these legal constraints, they were still entitled to claim benefit of clergy in temporal law courts. Those under the greater excommunication were not allowed to draw up a testament, although under the lesser form were entitled to do so. They were also permitted to be named as executors, but could take no action until they had been absolved from excommunication. The final sanction of this form of punishment was that the individual was denied a Christian burial, if he had not obtained absolution. A formulary book at Worcester includes a copy of a form of inhibition from the Lichfield consistory court against the churchwardens of Willoughby in Warwickshire in 1707. The bishop requested that the body of one Thomas Clarke of the City of Coventry was to be exhumed from its resting place under the floor of the chancel, and reburied at a cross-roads. (87)

Those who remained excommunicate for 40 days might be subject to further punishment. A writ of *de excommunicato capiendo* could be sought by a *significavit* from Chancery, by which process the individual was referred across to the civil courts for imprisonment. Until 1813 an excommunicate was unable to serve on a jury, act as a witness, or take legal action to recover property.

The clergy were subject to a similar process. They could be suspended from, or deprived of their benefice. If the problem was sufficiently serious, they could be degraded, or removed from the ministry, though this latter action has not been found at Lichfield. The forms of suspension used were *ab officio* or *ab beneficio* singly, and then as *suspension ab officio et beneficio*, a combination of the two. These can be seen as a temporary degradation and temporary deprivation respectively. Suspension when applied to the laity was described as suspension *ab ingressu ecclesiae* and this was the equivalent of a temporary excommunication, used for lesser offences. Grey recorded this as being disused in his early eighteenth century extracts from Gibson. (88)

The numbers of excommunication books from the Lichfield courts give a clear idea of the decline in the use of this punishment. Seventeen volumes survive from 1581-1640 (information from 1599-1611 is missing), one volume for 1661-1667 and two volumes for 1709-1812, with very few missing years from the latter. The problem lies in deciding the terms of entry for these books, certainly from the latter period. After the Restoration it related to non-appearance at the consistory court, but whether every absentee was listed or not is unclear. Did they record every single excommunicate or merely those whose lapses were more severe than others? In some years absolutions are recorded, but this was too sporadic to build up an accurate picture of the situation. These lists could theoretically also include those who failed to respond to the *quorum nomina* citations for archdeaconry visitation courts or the peripatetic probate courts, but this was unlikely. The numbers of those excommunicates recorded in the Lichfield

excommunication books and those from the Gloucester records have been plotted onto a chart. There is an obvious decline, but the Gloucester records are fragmentary.

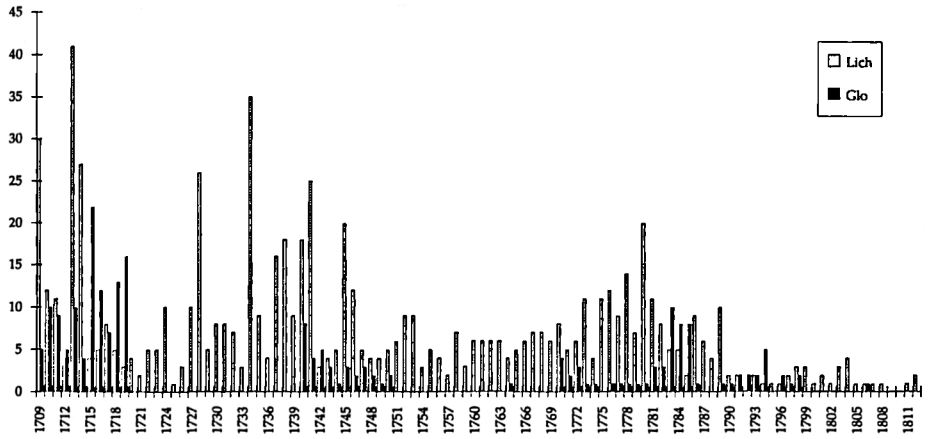


Fig. 1.1 Annual numbers of excommunications recorded in the consistory courts of Lichfield and Gloucester, 1709-1812.

Elizabethan critics of the church courts were vociferous on the subject of the use of excommunication as a punishment by the courts for two reasons. First that it was used too frequently for little good reason. If a defendant failed to attend court in response to the first citation they could be declared contumacious and thus excommunicated automatically. Second, proxies for absolution were easy to obtain. Archdeacon Hale was quoted by Price as saying that 'punishments which affect only the mind and conscience have little influence upon such persons who have no respect for religion'. (89) There must have been many such people around during the period immediately following the Reformation.

The question of excommunication and its too frequent use in the Elizabethan period generated a paper by F. D. Price on, 'the abuses

of excommunication and the decline of ecclesiastical discipline'. It is to be presumed that the initial part of his paper refers to office causes, relating to disciplinary matters which would have been heard in summary form. The immediate penalty for failure to attend would have been excommunication. The situation was further aggravated by the use of payments for absolution which reduced the sentence from one of spiritual discipline to one of small financial penalty. Price quotes very high proportions of defendants failing to attend court, though he does not discuss the many possible reasons, or the fact that secular courts faced similar problems of attendance. The overuse of the sanction led to reform of the Constitutions in 1597 whereby excommunication was to be pronounced in public and repeated every six months. This still did not deter some individuals from standing excommunicate for several years at a time, which might suggest there was little respect for the church. However, this was a period when the standards of the parish clergy were still low, and absenteeism and pluralism a problem. It would be an interesting exercise to examine the parishes from which the excommunicates came and look at the provision of clergy and services there.

Price also argued that 'temporal penalties [do] not seem to have been employed'. (90) This was hardly surprising: there were very few gaols in which to lock up offenders, and little popular support for imprisonment. These factors were probably more important than the alleged rivalry between Chancery and the church courts proposed by Price. The two institutions dealt with two totally different forms of law. Chancery, heavily overloaded, was probably reluctant to take on such minor affairs as writs of *de excommunicato capiendo.*

Those who failed to respond to citations, decrees, or other requests of the courts were declared contumacious, that is guilty of contumacy, or contempt of lawful authority. This has always been seen in terms of lack of respect for the church courts, although probably some citations were sent out late, or those due to receive them were away from home. (91) In view of the way the system worked, absence might also be seen as a response, in that the matter had been cleared up, particularly in instance causes where the cause was pleaded in plenary form. To receive a citation would be the first official indication that action was to be taken in the courts. This may well have generated efforts to sort the matter out quickly to prevent further expense and potential acrimony It could have been a cheap way to accelerate the reconciliation of an argument. If the first citation did not produce a response, then a further document, a citation *viis et modis* would be issued. This would be stuck to the door of the house of the defendant, and then later fixed to the door of the church, to announce to all and sundry that his presence was required in court. The comparative rarity of this form of citation at Lichfield would indicate that the first form had been successful and that the matter had been cleared up. If it had not been cleared immediately, or the court had not been informed, the matter would appear to have remained outstanding and the defendant declared excommunicate. Office business, however, followed a summary form of pleading and those who did not respond immediately would have been declared contumacious and excommunicated automatically.

Obviously, those whose allegiances lay outside the Established Church would regard this form of censure as of little significance. For those within, it still mattered. The 'Whole Duty of Man' referred to

the sin of 'railing' as 'amongst those works of the flesh which are to shut Men out both from the Church here by Excommunication ... and from the kingdom of God hereafter'. (92) To those within the church in 1715, excommunication was obviously not forgotten, although by the end of the century it may well have lost almost all of its significance.

Law books continued to refer to excommunication throughout the eighteenth century. The basic texts continued to be used, but updated with precedents, the fundamental form of law remaining static because no new canons were created or old ones modified. Small adjustments were made through statute law, but these had little effect on the church courts.

The question as to the status of excommunication in the community is a difficult one to resolve. One very rare example of public reaction to excommunication comes from a letter of 1779 in the Lichfield court records. Ralph Beardow had been taken to court in a cause relating to non-payment of fees/stipend and salary. His letter of complaint is worthy of consideration:

> Sir I have been abstant from Chesterfield six weeks agrate maney miles in yorkShere where i was obliged to go for work having none at Chesterfield and I hope I shall stay the Remander of my D[blank in text] I Came on Chrismas Even when I Receved your letters which I cold not in no wise pay in So Short a time had I Been in the Cuntrey I have sent you a line as soone as I poseble Could I shall But Stay fore days before I must Return worck is verey Scace and no money to be had when the work is Done you

Threatned me to Excominicate me if you Do you will neither get profit nor Credit by hit I have Told a great Maney people the afaire which saith it is a great pese of ill nature of you to Do aney such thing being that I have paid and Do in Devour to pay you if you give mee time if not you must Do as you please I shall Return in too or three months at fordest when I hope to see you at Lichfield if you be so Content

your humbl Sr Ra Beardow
Decm 26th 1779 (93)

The letter was provoked by a cause that William Jackson (a proctor of the Lichfield court) had started against Ralph Beardow, coalminer, of Ashover near Chesterfield, for unpaid fees. William Jackson had probably acted as proctor in a family dispute over the will of Ralph Beardow the elder, coal miner, at Lichfield in 1777-8. It is interesting to note that, although Beardow could see no 'profit nor Credit' in excommunication to the proctor, he was still very concerned by the threat of this action. If he had not felt some degree of concern he would not have gone to the trouble of writing to explain his circumstances. Beardow's need for further time to pay also illustrates the proctors' problem of extended periods of credit, and their comparative lack of sanctions to claim their money back.

The final stage in the process of discipline of the church courts was that of the writ of *de excommunicato capiendo*. This was issued from Chancery on the request of a *significavit* to the local justices. Successful completion of the process would involve the defendant in imprisonment. Theoretically this was an example of the co-operation

of the church and civil authorities. In practice, this method of discipline was not utilised by the church courts.

Excommunication all but disappeared under an Act of 53 Geo III,c.127,s.3 when it was ruled 'That no person who shall be pronounced excommunicate, shall incur any civil penalty or incapacity whatsoever, in consequence of such excommunication'. They were liable to be imprisoned for a maximum period of six months, using the common law writ of *de excommunicato capiendo*, but this remained a dead letter. (94)

The debate in the House of Commons relating to the Ecclesiastical Courts Bill in 1813 produced another piece of evidence when a defamation cause heard before the commissary court of Surrey was discussed in some detail. This related to the defamation of a lady whose initials had appeared by a number of large sums of money, the deduction of which from a company ledger had resulted in a bankruptcy case. (95) The use of a commissary court would suggest an element of discretion was foremost in the minds of the parties concerned. The defendant was acquitted, but subject to a further trial in the Court of Arches in London. On this occasion the defendants were found guilty and enjoined to perform penance. Again, discretion was obviously uppermost in their minds, because a dispensation was sought, at a claimed cost of £95! It was felt that the church courts should offer sentences 'more accordant with the spirit of the constitution', in other words, secular punishments should be meted out. However, a comment was made that the proposed Bill under debate 'did not take away the consequences of excommunication', implying that these were still a force to be reckoned with. (96) The Act

for the better Regulation of the Ecclesiastical Courts of 1813 can be seen as an amelioration of the burden of excommunication, given that the six months' imprisonment it laid down was never likely to be imposed.

Summary

The doubts cast upon the probity of the church courts relate to research on the early modern period. Certainly after the Restoration, the laying out and display of their rules and tables of fees should have dispelled any questions of their honesty. Their newly re-built structures still on consecrated ground, in the sanctified and relative peace of the cathedral, would have provided an atmosphere of suitable solemnity for arbitration of parochial problems. The procedures of the courts do not seem to have been protracted by the court officials. It must be remembered that instance causes proceeded at the pace of the protagonists, whose personal predelictions and circumstances may have delayed the process for reasons we can no longer see. There may also be administrative procedures which we do not yet fully understand. A Chester court book records in 1733 the following:

> In hopes of peace, Herbert his term probatory is renewed to the third court day of this term, to wit, the Cause dismissed.

What may superficially appear to have been procrastination may have had a perfectly good reason. (97)

The punishments of excommunication and penance seem to have sufficed for the type of business passing through the courts, given that plaintiffs were still choosing to use them for the negotiation of disputes, particularly within close-knit rural parishes. Where penance was done no doubt local honour was satisfied. The fact that so many causes simply disappeared implies that the plaintiffs had been able to resolve their disputes informally. We should probably see this as a sign of success, not failure; by initiating a suit they had helped to trigger the process of conciliation and compromise.

References:

1. Quoted in Mary Kinnear, 'The Correction Court in the Diocese of Carlisle, 1704-1756', Church History 59, 2, (1990), pp.191-2.
2. Christopher Hill, Society and puritanism in pre-revolutionary England (1964), p.xi, suggests that 'church courts interfered in countless petty ways in the daily life of every citizen'.
   T. Isaacs, 'The Anglican Hierarchy and the Reformation of Manners, 1688-1738', Journal of Ecclesiastical History 33, 3, (1982), p.410, refers to the 'slow and ineffectual ecclesiastical courts'.
3. Douglas Price, 'The Abuses of Excommunication', English Historical Review (1942).
4. R. Marchant, The Church Under the Law (1969). This view was also put forward by Ralph Houlbrooke and Martin Ingram.
5. Douglas Price cast doubt of the honesty of the courts. His doubts were repeated by Lawrence Stone, The road to Divorce (Oxford, 1992), p.41, who stated that the courts were 'becoming more and more unpopular because of their gross corruption'

before the civil war. He also saw the 'secularisation of society undermine the self-confidence and moral integrity of the officials of the courts between 1680 and 1720'.

6. J. Addy, ed., 'The Diary of Henry Prescott' Chester and Lancashire Record Society 3 vols., (1987-1997).
7. WoRO, 794.02 BA2835, 'Rules of the Worcester Court'.
8. F.S. Hockaday, The Consistory Courts of Gloucester, Trans. Bristol and Glos. Arch. Soc. 46, (1924), pp.280-7. This work was completed in 1911.
9. WoRO, 777.713 BA2706(iii), 'Rules of the Lichfield Court'.
10. Ibid.
11. In Bishop Wood's absence, the see was in the hands of Archbishop Sancroft, whose interests in the efficiency of the church courts was noted by Martin Jones in his thesis on the work of the Peterborough and Oxford courts immediately after the civil war.
12. Hockaday, 'Consistory courts', p.280.
13. At Lichfield the seal used was always that of the Chancellor, in both instance and office causes. If the initial citation could not be delivered for some reason, a note to that effect would have been written on the citation which would be returned to court. A further citation *viis et modis*, would then be extracted from the Registry and affixed to the door of the individual's last known address for a short period of time, five minutes has been recorded, before being fixed to the door of the church. A number of these citations in the Lichfield Joint Record Office still bear the marks of sealing wax on their corners from this procedure.
14. LJRO, B/C/2 (1718).

15. Worcester Rules, para 2; and Hockaday, 'Consistory courts', p.281.
16. 'Rules of the Lichfield court', para 3.
17. Documents which required to have a seal affixed to them had to be issued from the Registry and signed before being passed to the judge's representative to apply the seal to them. There are occasional references to the bills for seals.
18. Hockaday, 'Consistory courts', p.281.
19. Ibid.; and 'Worcester Rules', Libels, para 1.
20. 'Worcester Rules', Libels, para 2.
21. A proxy was the official record of the appointment of a proctor by one of the parties.
22. Hockaday, 'Consistory courts', p.281; 'Worcester Rules', Proxies.
23. Hockaday, 'Consistory courts', p.281.
24. Hockaday, 'Consistory courts', p.281; 'Worcester Rules', Answers, para 1.
25. Lichfield Rules, para 7.
26. Hockaday, 'Consistory courts', p.282; 'Worcester Rules', Answers, para 2.
27. 'Worcester Rules', Answers, para 3.
28. 'Worcester Rules', Term Probatory.
29. Hockaday, 'Consistory courts', p.282.
30. Lichfield Rules, para 22.
31. Hockaday, 'Consistory courts', p.283; 'Worcester Rules', Witnesses, para 1.
32. Hockaday, 'Consistory courts', p.284; 'Worcester Rules', Expenses; Lichfield Rules, para 22.
33. Hockaday, 'Consistory courts', p.284; 'Worcester Rules', Small Actions.

34. Lichfield Rules, para 27.

35. Hockaday, 'Consistory courts', p.284.

36. 'Worcester Rules', Small Actions.

37. Ibid.

38. Hockaday, 'Consistory courts', p.284; Worcester Rules, Process upon Presentments.

39. Hockaday, 'Consistory courts', p.284; Worcester Rules, Granting Administration.

40. Lichfield Rules, para 28.

41. 'Worcester Rules', Concerning Courts, para 1.

42. Hockaday, 'Consistory courts', p.285.

43. Ibid.

44. 'Worcester Rules', Concerning Acts of Court, para 3.

45. 'Worcester Rules', Concerning Acts of Court, para 4.

46. Ibid.

47. Lichfield Rules, proxies, para. 1.

48. Lichfield Rules, *ex officio*, para 3.

49. Hockaday, 'Consistory courts', p.285.

50. Philip Floyer, The Proctor's Practice (1744), p.8.

51. The Judge's patent stated the right of the Judge to act in that role in the court.

52. Hockaday, 'Consistory courts', p.286.

53. LJRO, B/A/19/2, The copy out-letters of Richard Raines, Chancellor, 1683-1689.

54. Hockaday, 'Consistory courts', p.287.

55. LJRO, B/C/5/1778/1.

56. Copied *verbatim* from the final paragraph of the identical statement in Floyer's Proctor's Practice p.13.

57. The court of Doctors' Commons in London.

58. LJRO, B/A/19/2-119, Out-letters of Richard Raines.

59. Richard Helmholz, Canon Law and the Law of England (1987), Chapter 3.

60. WoRO, Register's day book Aug-Oct 1765, shows one pauper being granted absolution, another having to perform penance in September and a further three performing penances in October of that year. All the paupers were represented by James Holyoake, a proctor of the court.

61. WoRO, 716.02 BA2670(3).

62. Helmholz, Canon Law.

63. Burn, Ecclesiastical Law II, p.264.

64. In the sense of examining the accounts in order to allow or disallow items. The bills were often rounded down after this procedure.

65. Burn, Ecclesiastical Law II, pp.267-270.

66. WoRO, 794.02 BA2835.

67. Hockaday, Unpublished typescript Gloucester Public Library, pp.166-172 (page 170 missing from original pagination).

68. Floyer, Proctor's Practice pp.172-6.

69. Burn, Ecclesiastical Law II, pp.270-273.

70. Nottingham University Manuscripts Department, LB237/3/20/2.

71. Burn, Ecclesiastical Law II, p.267-270.

72. Hockaday, Typescript MSS.

73. Each party drew up its own version of the sentence, the judge reading and signing only one, which was deemed to be the valid judgement.

74. This item would suggest an earlier date than 1722, the use of compurgators having ceased in 1641, and been confirmed in 1661, 13.C.II.7.

75. NUMD, LB 237/3/20/2.

76. WoRO, 974.02 BA2835.

77. Copied from Floyer, Proctor's Practice and published in Burn, Ecclesiastical Law II, pp.271-3.

78. Burn, Ecclesiastical Law II, pp.270-3.

79. C.J. Abbey, and J.H. Overton, The English Church in the Eighteenth Century II (1896), p.506.

80. Anon. Sermons to the Society for the Reformation of Manners (1724), p.6.

81. Listed by Richard Grey, A System of English Ecclesiastical Law (1730), p.394.

82. Grey, System of English Ecclesiastical Law, p.397, 'if ... ... common Fame is of no force to ground a Prosecution, many shameless Lewdnesses, and Scandalous Immoralities must go unpublished, and be suffered to reign and triumph'.

83. Ibid.

84. Grey, System of English Ecclesiastical Law p.399.

85. W. S. Holdsworth, A History of English Law I, p.361.

86. Burn, Ecclesiastical Law II, pp.247-8.

87. WoRO, 777.713 BA2706, unpaginated notebook.

88. For the rather pragmatic reason that the legal tenure of a benefice was the equivalent of a freehold tenancy which could present severe problems if it was withdrawn. Grey, System of English Ecclesiastical Law p.399.

89. Price, 'Abuses of Excommunication', p.108.

90. Ibid.

91. J. Spurr, The Restoration Church of England, 1646-1689 (New Haven, 1991), p.189, refers to an example from the diary of Ralph Josselin.

92. Anon, The Whole Duty of Man (1715), p.243.

93. LJRO, B/C/5/1779: Fees/stipend and salary: Jackson c Beardow.

94. Francis N. Rogers, A Practical Arrangment of Ecclesiastical Law (1840), p.421.

95. Rogers, Arrangment of Ecclesiastical Law, p.144. A Commissary was an individual with the authority of the Chancellor, but within a small area of the diocese only, in the role of assistant to the Bishop.

96. Parliamentary Debates XXVI, p.706.

97. ChRO, RO EDC 1/119 Court Book.

CHAPTER TWO : THE LICHFIELD COURTS, 1680-1830

Crimes or Offences punishable by Jurisdiction Ecclesiastical [are] reducible to 3 headings: Those contrary to piety unto God, Those contrary to Justice towards our Neighbour and Those contrary to Sobriety towards ourselves.

Anon notebook from Worcester courts, late C16. (1)

Recovery of the Lichfield courts after 1660

The Lichfield courts were reinstated after the Civil War under the guidance of Bishop Frewin, alongside the restoration of the much damaged cathedral by the Dean and Chapter. (2) The speed with which courts were revived has been noted by Clarke, who showed that records of probate and marriage licences were made prior to the official restoration of jurisdiction in July 1661. (3) The first citations for office and instance business were issued in August for the courts held in the following month, when Frewin was translated to York. (4) Their regeneration was comparatively simple in that some of the personnel from the pre-war courts were still exercent, having been involved in the Commission courts of the war period. Some fragmentary material of the proceedings of these courts remains at Lichfield. This shows familiar names, grappling with the problems of trying to secularise some of the business of the church courts, particularly that of probate. The Commissioners met in a wide range of public houses across the diocese, the thread of continuity being the presence of Simon Marten, Notary Public and a proctor in the pre-war courts.

Business picked up slowly and steadily at Lichfield, under the guidance of Walter Littleton as Chancellor. He had obtained his LLD at Cambridge in 1639, was knighted in 1662 and was an advocate of some maturity. Following the departure of Frewin, Bishop Hacket was installed in August 1662, and Littleton remained as his chancellor for the first critical decade of the revival, until his death in 1670. Hacket worked ceaselessly for the rebuilding of the cathedral and its courts. His court furniture appears to have been replaced when the court came to rest in its final position in the vestry off the south aisle in 1796, drawn by Buckler in 1833. The Judge's seat would appear to be Hacket's original 'cathedra'.

Following Bishop Hacket's death, also in 1670, his successor Thomas Wood was elevated to the see from his position as dean of the Cathedral. Unfortunately he was singularly unpopular, having offended all and sundry by his behaviour. He chose to live at Hackney rather than Lichfield, and his lack of management of the episcopal estates, particularly the Palaces in the Close and at Eccleshall led to his involvement in legal suits. His appointment of his nephew Henry Webb as Register maintained a vital but fragile link between Bishop and courts, although his episcopal act books are not in the court records and are presumably lost. Wood's management of the see and his absence did not endear him to William Sancroft, Archbishop of Canterbury, who suspended him in July 1684 following a case in the Court of Arches. Wood was re-instated in May 1686, but continued to live at Hackney until his death in 1692. In spite of his absence court business continued to improve. During this period Archbishop Sancroft continued the efforts of his predecessor, Sheldon, to reform the protracted and outwardly complex procedures of the church courts

as a whole and proposals were invited for ways in which this could be achieved. Numerous suggestions were made but none implemented before his death in 1691. (5) However, there is a possibility that the rules of the Lichfield court discussed in Chapter One may have been formulated under his influence.

The final decade of the century saw the courts at York, Hereford, Oxford and Peterborough showing signs of stress, and in the first two cases, begin to go into a decline. (6) The Diary of Henry Prescott, deputy register of the Chester Consistory court, also refers to the quietness of court business during the first decade of the eighteenth century. (7) The York courts suffered from problems of management, with the courts of Chancery and Consistory being merged and held on the same day. This was further compounded by the problem of finding suitable personnel, after the Register was killed in a duel in 1694. (8) Jones found that the Oxford courts too suffered from inadequate management. Too many people were being cited at very short notice, giving the impression of a reduction in efficiency between 1660 and 1675. (9) The distinction between Archdeaconry and Consistory was blurred in the Oxford diocese by the appointment of officials to serve both courts, although their courts held separate jurisdictions. The late seventeenth century courts in the Hereford diocese sat concurrently, the confusion reaching a peak in the 1690s. The Bishop's Chancellor was also the Archdeacon's Official and both courts employed the same Register. (10)

The archdeaconry courts of the Lichfield diocese disappeared from the records at this time, sharing the same personnel with the consistory court. But the levels of business were maintained in the

consistory court, and during the second decade of the eighteenth century there was a considerable increase in the number of causes, shown in Fig. 2.1. This was in sharp contrast to the courts of Bath and Wells diocese, where the evidence shows the courts declining from a peak of business in 1737.

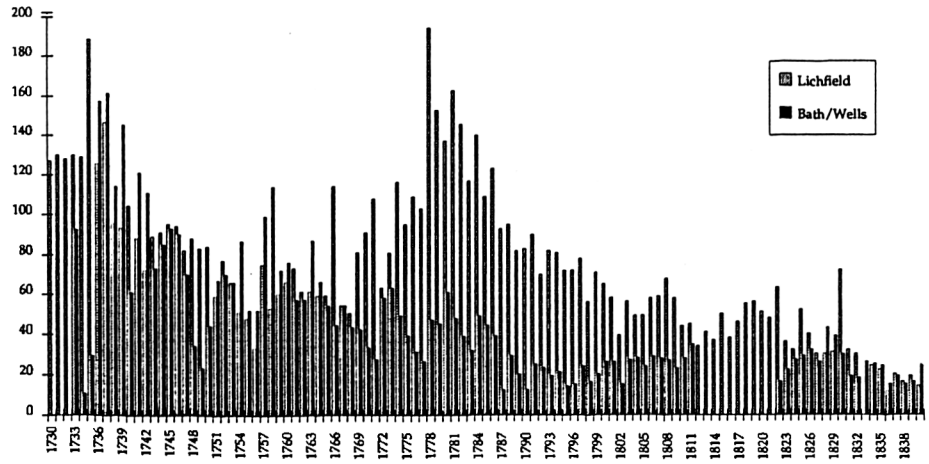


Fig. 2.1 Total number of causes, Lichfield/Bath and Wells courts, 1733-1840.

THE HIERARCHY OF THE LICHFIELD ECCLESIASTICAL COURTS

i) Under episcopal jurisdiction

The hierarchy of the ecclesiastical courts was nominally simple and consistent from one diocese to another. Much of the work that has been published on the records of the church courts has considered the work of a single court in isolation, unrelated to a complete system. However, each court fits into its own diocesan context, and its work might be influenced by this position. (11) The courts were linked to each other, horizontally and vertically. The horizontal network

between the ecclesiastical courts was such that an individual living in another diocese or peculiar could be summoned to appear at the Lichfield courts by the issue of Letters of Request, whereby the Bishop of the appropriate diocese was requested to cite the required individual on behalf of the Bishop of Lichfield. Other courts outside the remit of this study were the probate and visitation courts, both of which were the ultimate responsibility of the bishop.

The lower level of the horizontal system was that of the archdeaconry subdivided into deaneries. The archdeacons within a diocese were also entitled to hold their own regular static courts. In the case of Lichfield, these would have been held in Shrewsbury, Stafford, Coventry and Derby. The only surviving material directly relating to the regular sittings of these lower courts consists of one thin act book from the courts of Derby, nominally from 1678 to 1724. (12) *Quorum nomina* citations survive for the archdeaconry visitation courts, the defendants listed by parish within deaneries. The archdeacon's apparitors and the parochial churchwardens reported transgressions from their various deaneries to the archdeacon and the transgressor would then be presented for the attention of the courts. The business of the archdeaconry courts was probably heard in summary form, which may explain the lack of cause papers from these courts. Episcopal visitation business was heard in the year of his enthronement and every following three years by the Bishop, and every six months by his archdeacons, though these courts lie outside the scope of this thesis.

The ecclesiastical courts were used for the correction of manners and the reformation of the souls of both parishioners and clergy, the

granting of faculties, and the hearing of instance causes between parties. The consistory court held fortnightly in the cathedral at Lichfield formed the upper level. Appeals from the consistory courts were sent to the metropolitan courts. In the case of Lichfield appeals were sent to the Court of Arches in London, although these were always few in number. Only 152 causes were sent on appeal between 1680 and 1830. (13)

The use of the church courts was a legal necessity for the granting of probate, as well as testamentary and matrimonial causes. Their main function in this area was the establishment of the validity of wills, and granting of separations to couples whose marriages had broken down. This legal necessity could, in itself, account for the survival of the courts, but there was a groundswell of instance causes which helped to maintain their business levels. The Lichfield consistory courts remained active down to the mid-nineteenth century.

Some types of business could be heard in either civil or church court, and the attendance of the Lichfield proctors is recorded from the 1760s for several days at a time at the local Assize courts as well as in London and Chester. (14) However, proctors in the church courts could neither act in the civil courts nor serve as Justices of the Peace. (15)

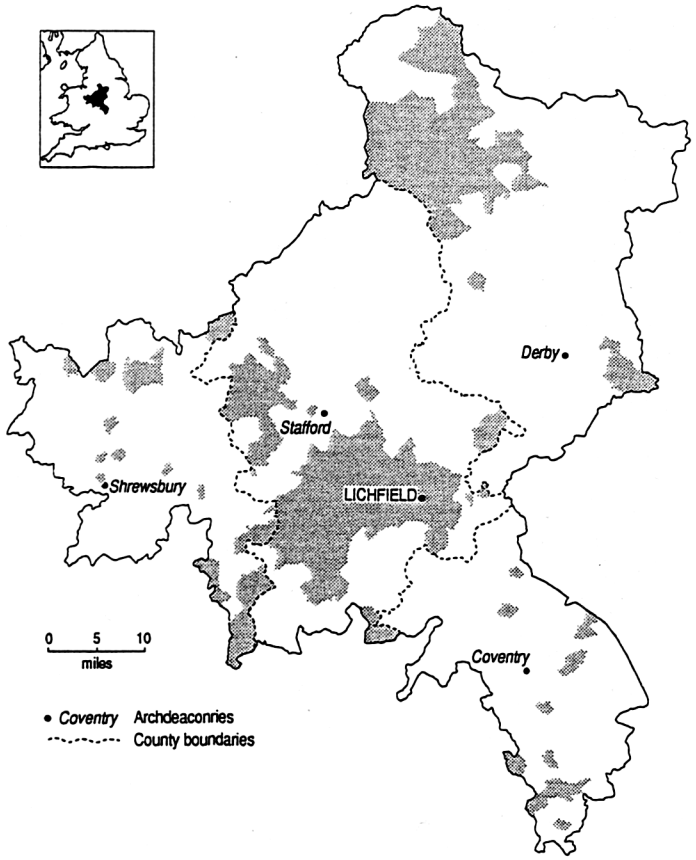
ii) Peculiar Jurisdictions

Other groups within the church were also entitled to hold their own courts, in areas outside the episcopal jurisdiction of the diocese in which they lay. These areas were known as peculiars. The largest in the Lichfield diocese was that of the Dean and Chapter of the Cathedral,

who dealt with the affairs of the Cathedral Close, a parish physically within the City of Lichfield (although an edict from the Star Chamber in 1635 declared the Close to be in the county of Stafford (16)), as well as other land in Staffordshire under their control. A long run of their court papers survives from 1354 to the nineteenth century, alongside those of the consistory courts, and housed in the diocesan registry. The papers relating to the courts of the five royal free chapels are not to be found amongst the Lichfield papers, nor are those of the courts of the eight cathedral prebends. (17) Manorial peculiars include five parishes and part of another in Staffordshire, three parishes in Derbyshire, seven parishes in Shropshire with another township, and five parishes in Warwickshire. The survival of their documents would, of course, be the responsibility of those who held the peculiars and they probably lacked the storage facilities of the bishop whose papers were held in the diocesan registry, believed to be on the site of No. 19 the Close. (18) These courts, too, were able to use letters of request to cite individuals from the diocese, and it is from the occasional survival of this type of document that the existence and activity of the peculiar courts can be detected, instead of merely assumed. Nominally, these peculiar courts were in secular hands, but their overall allegiance was to the monarch, in his role as head of the Church of England.

The area under the jurisdiction of the Bishop of Lichfield was thus considerably less than would appear from a cursory glance at a map of the diocese, and it is to this area that the extant cause papers relate. The extent of the extra-parochial areas and peculiars is shown on Map 1. The diocese was made up of 494 ancient parishes, of which 69 were outside the episcopal jurisdiction. Staffordshire peculiars

formed 26.5% of the 143 ancient parishes in that county. Of the 123 ancient parishes of Warwickshire in the Lichfield diocese, 95.1% were under the jurisdiction of the bishop; 91.5% of those of Derbyshire and 85.7% of those parishes in Shropshire which were in the Lichfield diocese.



Map 2. The extent of peculiars and extra-parochial areas within the diocese of Lichfield and Coventry.

LOCATION OF THE COURTS

i) The Consistory Court

Until the late eighteenth century the consistory courts of the bishop were held on the east side of the north transept of the cathedral,

and those of the dean on the east side of the south transept, shown on Plate 1, p.77. Each had easy, and discreet, external access through the north and south doors respectively into the Cathedral Close. John Snape's plan of Lichfield published in 1781 shows the diocesan registry housed some 20 yards away from the main door of the south transept. The old location of these courts is still shown on Harris's plan published in 1798 (19), after the restoration of the building by James Wyatt. (20) An undated and unsigned letter written at the time of this work describes the bishop's court as 'being in a very Ruinous and Decayed state, the walls in many parts bulging and giving way and letting in the damp air so as to render it very uncomfortable and hazardous to the Officials of the said Court, and the Suitors'. (21) A plan for the refurbishment of the court was produced by Wyatt, showing the location of the elaborate seat of the chancellor deputising for the bishop, and the large, square table around which the officials and proctors sat, benches around the walls being provided for the plaintiffs and defendants, to await their hearing. (22) An ante-room was also to be fitted with benches around the walls and the whole area to be wainscotted. (23) This plan never materialised, and another undated letter suggested that a further plan had been put forward. (24) 'If the Early Prayers may be read in the Consistory Court, and, considering how very few persons attend them, the Bishop thinks they may without giving any offence, it will save a great expense and be the means of adding to the beauty of the Cathedral'. Wyatt had also proposed that 'the old vestry in the south aisle may be rendered very commodious for the intended new Consistory Court'.

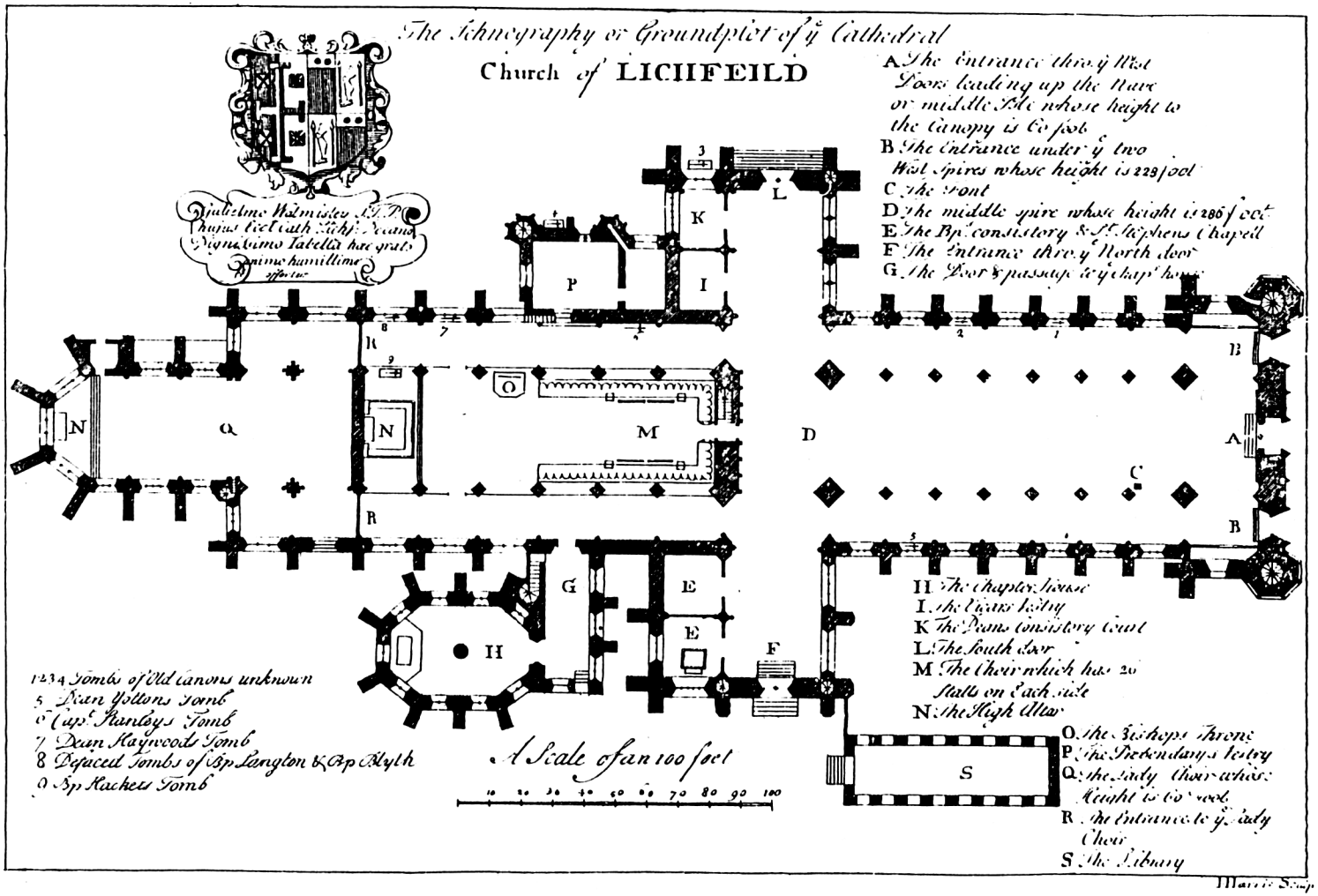


Plate 1

Plan of Lichfield cathedral by Harris, published by Stebbing Shaw in 1801 giving the location of the eighteenth century consistory courts. The Bishop's Consistory is marked at E, and that of the Dean at K. The Registry was housed some 20 yards from the doorway marked L. Following Wyatt's restoration the Bishop's court was moved to the Prebendal Vestry marked P.

At the Audit of 1791 the Dean and Chapter refer to

> representation having been made by the Chancellor, Register and the members of the Consistory Court that the old one having been entirely Removed in the Improvement of The Cathedral the Dean and Chapter consented in the presence of the Lord Bishop that the Chancellor Register and officers may hold their courts in the Chapter House till the circumstances may be duly considered to fit up a New Consistory in the Vestry. (25)

On 31 October 1796, the Dean and Chapter act book refers to a decision that the vestry in the south aisle of the cathedral be 'appropriated for and to be used as the Consistory court of the Bishop of Lichfield and Coventry in future'. (26) A further eleven months elapsed before it was ordered 'that Mr. Potter (27) do proceed to fit up the Consistory Court according to the plan given in'. (28) Unfortunately, the plan does not appear to have survived. From an illustration in the William Salt Library by J.C. Buckler, the court was still held in the vestry in 1833, (29) where it died a lingering death. The court room therefore was always a small intimate place on consecrated ground, within the cathedral itself. It was also one of comparative privacy, there being little room for spectators, which may well have been one reason for its continued survival. In spite of some movement within the building, the courts maintained a sense of continuity and stability. This stability was further maintained throughout the period by the retention of Tuesday as the hearing day, a factor which created problems at York. There was also only a single court which did not permit a similar situation to develop at Lichfield

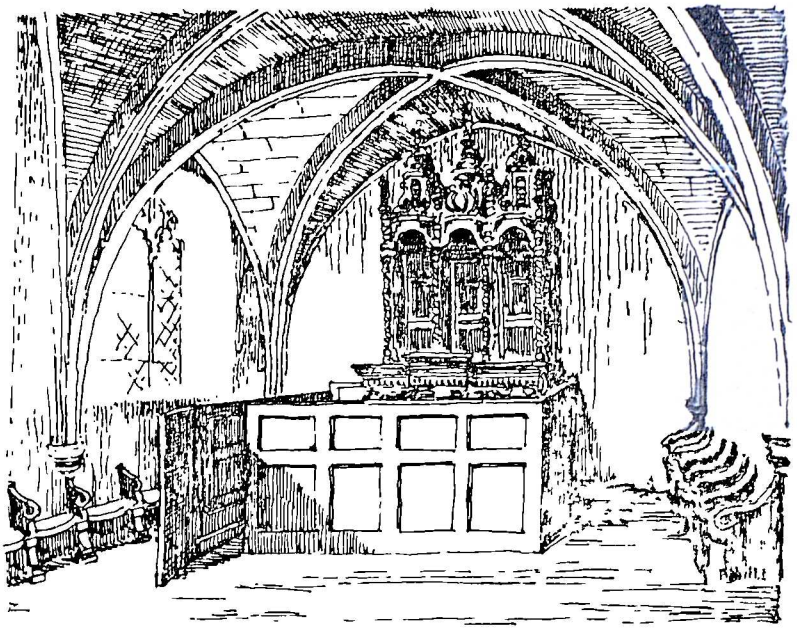


Plate 2

Sketch from J.C. Buckler's drawing of the Court in place in the vestry in 1833.

Plate 3

Surviving seat from the court still in the vestry. The elaborately carved seat is all that remains. The table and wainscott have been removed.

that had developed at York, in which two courts were merged. This, according to Till, created disruption and severely damaged the business of the courts. (30)

Not all business was transacted in the court room; many acts were 'had, sped and done' in the houses of proctors in the Close outside the fortnightly court days, particularly those involving the assignment of guardians to minors. Such action was often necessary for the purpose of the protection of the interests of minors in relation to legacies. It was also used on some occasions for business relating to faculties. Here too, an atmosphere of relatively quiet privacy would have prevailed.

The courts were probably perceived as being relatively honest by those who used them, the cause being tried on consecrated ground and argued between lawyers, as opposed to going before a Justice of the Peace whose decision was that of a single individual, often hearing cases in his own house, with no witnesses present.

ii) Archdeacons' courts

The archdeacons within a diocese were entitled to hold both static and visitational courts. In the Lichfield diocese, these included Shrewsbury, Stafford, Coventry and Derby. The archdeacon also oversaw his various deaneries within his control. The archdeacon's court would have issued citations to those perceived to have been guilty of the moral transgressions reported by their churchwardens or clergyman. The archdeacon was also entitled to use apparitors, to gather information from parishioners. Individuals wishing to use the

courts for instance business would have been at liberty to do so. However, surviving material from these lower courts is virtually non-existent; one thin act book survives form the courts of Derby, nominally from 1678 until 1724. (31) From this date, only the visitation courts seem to have survived. The archdeacon issued *quorum nomina* citations, with names listed by deanery and parish, to those required to attend his bi-annual visitation courts. They heard a range of business concerned with morality and also called in those who had been slow in dealing with matters relating to probate. These citations often have scribbled notes upon them, referring to individuals to be cited for various reasons, and suggesting that the information had been passed to them on the day of the court.

The act book for court of the archdeaconry of Derby lists causes brought by the office of the judge between 1678 and 1685. (32) Analysis of the contents shows that the dating - 1678-1724 - is technically accurate in that these are the first and last dates that can be found in the volume, but the actual court cases refer only to the years 1678-1685 with a list of curators (33) and schoolmasters dating from 1691. This volume gives the impression of a very small amount of business passing through the court at this time, and when examined in more detail, 1678 shows only 10 cases though the year is incomplete. In 1679, 23 cases appeared before the court between January and July, but this was the year of an episcopal visitation and the lesser courts were prohibited from hearing cases for six months, which would appear to have been the case in Derby. In 1680 and 1681 there were 50 and 30 causes respectively, which dropped to 14 the following year, again a visitation year. Business picked up again in 1683 but dropped dramatically in 1684 and 1685, after which continuous recording ceases.

The book also shows that the courts were sitting only in Derby in 1679 to 1681, though causes were being heard at Chesterfield the following year. There is no direct evidence in the form of court books for archdeaconry courts in Stafford, Shropshire or Warwickshire, although *quorum nomina* citations are still extant, showing the numbers of parishioners to appear at the bi-annual visitation courts. These suggest that the visitation courts were still extant, but that the bi-monthly static courts had ceased to exist.

iii) Probate courts

Citations to appear at Cheadle probate courts in 1765 (34) and 1787, (35) issued through the office of the vicar general, cite 111 and 55 individuals respectively to appear in a single morning. This gives some indication of the numbers involved in these courts, although they probably fluctuated. Most of the business of these courts would have been the straightforward granting of probate or letters of administration, and their bi-annual circuit involved courts at Stafford, Caverswall, Derby, Chesterfield, Shrewsbury, Newport, Coventry and Coleshill. Where a will was contested or an estate unadministered matters would have to be heard in the consistory court at Lichfield. These courts formed part of the administrative jurisdiction of the bishop, but fall outside the remit of this thesis.

OFFICIALS OF THE COURTS

The officials of the ecclesiastical courts included the chancellor, a chief surrogate, register, deputy register, proctors and apparitors. Their

calibre was of considerable importance, as Till's work at York has demonstrated. (36) Throughout the eighteenth century, the Lichfield consistory courts were staffed by four to six proctors, with a register, (37) deputy register, and an unknown number of clerks under the supervision of the diocesan chancellor.

i) The Chancellor

In 1730 Grey noted that the Chancellor had to be of a minimum age of 26 years, learned in both civil and ecclesiastical law and a graduate with either an MA or LLB and reasonably well practised in the law. He also had to be 'of a Good life and Behaviour'. He was in fact more than merely the Bishop's deputy - he stood for the Bishop in court, and there was no appeal back to the Bishop. The position of Chancellor arose from the combination of posts of vicar general and official principal, the former being responsible for 'the Correction of Manners, and Punishment of Vice, and all other Parts of Episcopal Jurisdiction, except that of Hearing Causes'. (38) The origin of this appointment was that of an individual who was capable of administering the diocese when the Bishop was unable to do so. The official principal was responsible for hearing of instance causes in the consistory courts.

Educational qualifications have been established for only three of the eleven Chancellors between 1660 and 1830. Walter Littleton obtained his LLD in 1639, and was a Master in Chancery. (39) William Vyse obtained his DCL in 1774, and took over the chancellorship in

1805. (40) Thomas Law MA took office in 1821, having obtained his degree in 1815. (41)

In those cases where it was not possible for the Chancellor to be present by virtue of distance or, in the case of an individual administering justice in a peculiar, a Commissary was appointed. He too had to be of a minimum age of 26, but further qualifications are not well defined. Any judge in the courts who was found to be 'unskilful' could be removed (the mechanics of this process are not described), and any judge who was considered to be 'partial' would himself be judged by 'arbiters ... named on both sides to judge thereof'. (42)

ii) Surrogates

Surrogates were also appointed as substitutes for the Chancellor or Commissary. They had to be graduates or public preachers, and beneficed near the place where the courts were to be held. Again, a degree in Law or an MA were necessary, with some skill in civil and ecclesiastical law also being required. Men of 'modest and honest conversation', they had to favour true religion. During the eighteenth century they were responsible for the issue of marriage licences, and the payment for them to the authorities.

iii) Register and Deputy Register

The office of Register (43) was a post of considerable responsibility, and often nominal in that the Deputy Register in fact carried out his duties in many dioceses. Canon 123, quoted by Burn, says that no court official or anyone using the court 'shall speed any

judicial act, except that he have the ordinary register or his lawful deputy present'. The Register and his deputy both had to be Notaries Public and follow the basic requirements for becoming a proctor. The diary of Henry Prescott, Deputy Register of the Chester diocese during the first two decades of the eighteenth century shows a man totally engrossed in his work, in the evenings and at weekends. He was a very religious and serious individual, journeying through the diocese frequently and maintaining a wide range of social contacts. His diary also provides a rare insight into the filing systems of a Registry at this time. On 18 June 1706, after a meeting, Henry continues 'After at the Office in Dust, continued until 8'. The document he sought was found, 'After my Lord [the Bishop] and myself had searcht near 3 daies'. (44) Lichfield Registers also tended to leave matters in the hands of their deputies, whose names appear on the citations rather than that of their seniors. The use of a Notary for this office was also intended to help the judge's memory and ensure that litigants could not be legally injured by the Judge, the evidence of a Notary being equivalent to that of two witnesses. (45)

iv) Proctors

To become a proctor it was necessary to serve a long clerkship of seven years, under a strict discipline of articles, to a senior proctor with at least five years' experience. (46) It was not necessary to be a graduate, although John Fletcher, who also acted as Register to the Dean and Chapter, may have held the degree of BA. (47) Clerks were only to be taken on singly at five year intervals, thus ensuring constant supervision. At York, a fee of £100 was demanded from the master, although no fees have been identified at Lichfield. (48) An indenture

has been located for a clerk in the Worcester courts, where the son of a flax-dresser was apprenticed to a proctor of the court for 2s, in 1779. (49) Prior to being articled the potential proctor had to show some modest progess in classical education. Lichfield provided excellent opportunities for this in that Lichfield Grammar School provided a classical education and several of the proctors of the court were students at this institution, alongside Samuel Johnson.

On completion of their articles, they would be admitted as Notaries Public by a faculty from the Metropolitan, and capable of practising on their own account immediately. (50) Floyer describes the admission of proctors, presented by the senior proctors, preceded by the apparitor bearing the mace, taking their oaths and being assigned their seats by the judge. (51) Not only did they have to pay fees for admission, Floyer describes how they were expected 'usually to treat the whole procession upon their Admission, which is very expensive to them'. (52) It is highly likely that this custom of the Court of Arches was repeated in other church courts across the country.

Entry to the profession was restricted by the limited employment opportunities and by the necessity to petition for admission. At York this process required supporters, and a similar system probably operated at Lichfield, where certain families tended to dominate the profession. Social rather than educational qualifications would appear to have been important at this level, with family connections providing an even stronger passport to progress, leading to a considerable degree of nepotism, as Morris found in the Bath and Wells courts. (53)

The Lichfield courts employed five proctors continuously throughout the period, occasionally six, whose names can be traced through the cause papers, their initials only appearing in the Court Books. Again, names become familiar, such as George Hand and his son, and the Buckeridge family. Floyer describes the proctors of the Court of Arches as wearing 'black Prunella gowns with fur in this Court only', and simple black gowns in other courts. On their admission as Proctors, the judge assigned them 'seats in Court on his Right or Left Hand which they always keep when they plead'. (54) This implies that proctors would always sit on the same side of the table in the courts, maintaining order and continuity.

v) Apparitors

The lesser officials of the courts - the apparitors - fulfilled their ancient role as court messengers, working within well-defined geographical areas, and may have served the courts for comparatively short periods of time. These individuals, if we are to believe late sixteenth and early seventeenth century accounts, were hated for their duty of reporting all ecclesiastical 'crimes' and their task of delivering citations, decrees and sentences. In the Lichfield diocese there were Official apparitors for each of the archdeaconries, employed to deliver citations at a rate of 1d. per mile. (55) No apparent training or qualifications appear to have been required.

A 'draft of security to be given by an apparitor' remains from the eighteenth century Worcester courts. (56) The apparitor would appear to have been appointed by personal petition rather than selection by

the chancellor, and his appointment was at the 'pleasure and goodwill of the Chancellor'. His duties were rather more extensive than the mere delivery of court documents. The duties required 'great care, diligence, fidelity and honesty', qualities not associated with the profession in the late medieval period. The apparitors were also to be 'uncorrupted by the promise of money' for four crimes - 'the concealment of offenders', 'molesting the Innocent', 'perverting Justice' and 'bringing the courts into disrepute'. The documents in their care, citations, orders, sentences and decrees were to be delivered quickly, and their Fees were to conform to the Table of Fees, except when 'voluntarily offered'. Their duties also included making enquiries 'about matters of concern to the church courts, which were to be reported to the Judge or Register - the 'sneak' element so beloved of medieval critics of the courts. They were also 'not to hinder the crimes of the offender' nor take any part in proceedings for money,' and warned against, 'malicious reporting against any person publicly reported as innocent - so that they are not unjustly molested or court officials blamed'. Their assistance in the protection of the reputation of the chancellor, his Surrogates, the Register from 'suits resulting from his actions' put the onus on the apparitor to behave immaculately.

In 1685 the Lichfield apparitors included Robert Lovett, aged 55, husbandman of Coventry; William Smith, aged 58, yeoman of Shrewsbury; and John Butler, aged 58, yeoman of Derby. (57) Analysis of the names that appear on citations returned to the registry between 1745 and 1753 show that Simon Wood, glover, and Thomas Millington, weaver, both of the Close and John Cox, shoemaker, all appeared to work from Lichfield. Robert Bennett, a currier from

Shrewsbury, John Cantrell of Derby, who described himself simply as an apparitor, and Henry Clarke, a parchmentmaker from Coventry, served many citations during this period, but there is no name particurly associated with Stafford. The apparitors would appear to have employed a number of other individuals on an *ad hoc* basis, whose names only occurred once or twice. Thomas Millington was also sworn apparitor to the dean's court between 1717 and 1748. (58) The simple task of executing citations was treated seriously; when John Butler was admitted an apparitor in 1669 he 'received Instruccons how to demeane himself in the Execution of the sayd Office'. The following year a note to an apparitor, dated at Kenilworth, appeared at the foot of a visitation citation, 'Faile not but take care of your buisness to Cyte all persons for fornication for Clandestine marriage and for wills and Administrations an Endeavor to find out the same Crimes and Citye (sic) the persons that the gylty of the Crimes .....'. This was signed by Nathaniel Hinckes, a proctor and Notary Public. The black-gowned apparitors also maintained another role in the courts themselves, where Floyer records them as acting as mace-bearers before the judge upon his entry to the court and also at the admission of proctors to the court. The survival of two sets of apparitor's maces at Lichfield provides another scrap of evidence for links with the procedures of Doctors' Commons. (see Plate 4) They also acted as 'Criers of the Court', a role not mentioned in earlier descriptions of their work. (see Plate 5)

A court case dating from 1685 sheds some light on the roles of the officials of the court and their relationships with the other courts of the diocese. It was customary, during a visitation by the Bishop, to issue inhibitions suspending the jurisdiction of the archdeacons within

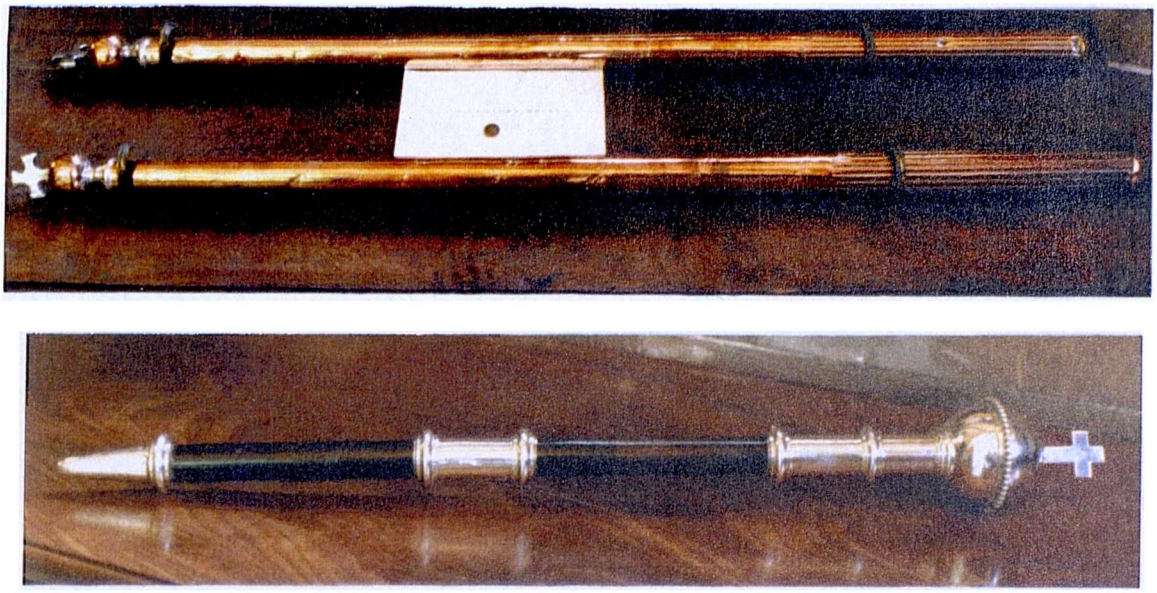


Plate 4

Apparitors' maces from the Lichfield court. The upper pair date from the seventeenth century and are made of copper. The single lower mace dates from the nineteenth century and is made of ebony and silver. It is possible that these items could be associated with the two major re-furbishments of the court.

Plate 5

The raised seat of the apparitor at the Consistory Court in Chester Cathedral, where the furniture can be dated to 1636. Note the doors for the parties in a dispute to enter the court, to sit on either side of the table.

a six month period of the visitation. Aden Froggatt, Notary Public, had transgressed by acting in a case relating to a clandestine marriage during such time. He then became the defendant in an office cause promoted by the chancellor, William Walmesley, whose depositions of witnesses in this cause ran to 71 pages. (59)

As we have seen, staff from one court could also work in another. Richard Walmesley, gentleman of the Close, aged 76, describes himself as having been proctor of the court for the past fifty years, register of the Shrewsbury Archdeaconry for 47 years and clerk to Sir Henry Archbold, chancellor for Derby. Ralph Swift of the Close, also a gentleman, aged 39 had known Aden Froggatt for fourteen years and been a proctor himself for five or six years. He referred to Mr. Marten and Mr. Blenkarne as 'ancient officers of the Court', the latter having been clerk to Mr. Latham while he was official of the Archdeaconry of Stafford. Simon Marten, son of the above, was a clerk in the register's office, register to the Archdeacon of Coventry and 'clerk to the Register within the counties of Derby and Warwick'. (60) His father had been deputy register of the Bishop and register to the Archdeacon of Derby. Marten also records Dr. Littleton as having been official to the Archdeacons of both Stafford and Derby, implying that those courts had been active between 1660 and 1670. The courts were obviously closely inter-related with individuals holding two posts concurrently, probably because the amount of business at archdeaconry level was insufficient to support an independent staff, as an analysis of the Derby act book demonstrates. It may also suggest that the hierarchy had begun to break down prior to the civil war, but the lack of documentation from other courts, except those of the Dean and Chapter, make this difficult to prove.

One feature of the Lichfield courts which must have helped their survival was their stability. Throughout the eighteenth century, only five proctors practised in the courts at any one time, occasionally six for short periods, and of the eighteen names that occur, eight were fathers and sons, one pair spanning the century between them.

Aleyne Lyell Reade's extensive research into all known contacts of Samuel Johnson and his family has brought to light information on the officials of the consistory court. (61) The existence of these courts during the life of Dr. Johnson has meant that the interrelationships between local families has been investigated. (62) These include several court officials, particularly the Hand, Buckeridge and Howard families. A brief insight into their cultural world is offered by the library of Gilbert Walmesley, (63) son of the Chancellor, William, through two accounts for books purchased from Samuel Johnson's father, Michael, in 1726 and 1727, and a further bill paid on 28 December 1729. (64) The first of these includes payments for a monthly journal entitled *New Memoirs of Literature* for February to October 1726 at one shilling each, and five other works of poetry and literature including *Gulliver's Travels* in two volumes, a Greek Dictionary and Ayliff's *A Commentary, by way of Supplement to the Canons and Constitutions of the Church of England*, published in London in 1726, totalling £4.2s.5d. The next bill dated 1729 was for seven books and eighteen monthly payments for another literary journal, The Republic, again at one shilling each. The books included *Smallpox* by Richard Holland; and *A Letter from Rome* by Conyers Middleton, *Showing an Exact Conformity between Popery and Paganism; or, the Religion of the Present Romans Derived Entirely from that of Their Heathen*

Ancestors. This material was balanced to some extent by his purchase of *Norfolk Congress: or, a Full and True Account of Their Hunting and Merrymaking; Being Singularly Delightful and Likewise Very Instructive to the Public* published in London the previous uear. The bill totalled £1.12s.9d. All his purchases were made within a few months of their publication. Such choice of books in two single years confirms Ann Seward's description of Walmesley as 'the most able scholar and the finest gentleman'. (65) He was known also for his friendship with the young Johnson. (66) Walmesley's contemporary in Chester, Henry Prescott (67), the Deputy Register, demonstrates similar intellectual calibre. He spent many hours with his books, predominantly classical literature, history, and some theology, and with his collection of Roman antiquities, particularly coins for which his valuations were widely sought.

Since the time of Thomas Wood the Bishop of Lichfield had lived outside the diocese or at Eccleshall Castle. The late seventeenth-century palace in the Close was occupied by the wealthier elements in the local community, of which William was one. George Hand, one of the court proctors, lived in the Chantry Priests' House known by the mid-eighteenth century as College House, also in the Close. (68) His will dated 1745 left 'the house witherein I now dwell' to his grandson Watson, (69) whose widow married the Bishop of Bristol. George probably rented part of this extensive property to another proctor, Edward Burslem Sudell.

Relations between the court personnel were not always good. The work of the courts suddenly and inexplicably dropped in 1708. The Court Books contain references to the fact that they had been taken

to the Court of Arches in 1709. A long standing personality clash between William Walmesley, the Vicar General, and George Newell, a proctor in the court had finally reached a head. George appealed against accusations of contempt of court and the cause went to London. (70) Papers in the Rawlinson MSS provide some of the background information. (71) George had acted as clerk to William's father, and William had 'passed his chief clients to the said Newell'. (72) In spite of being granted a degree by the Archbishop of Canterbury by faculty, George did not come up to William's professional expectations, and he failed to acknowledge the extent to which he was beholden to William. After a number of skirmishes in court, the rift became public. William stood with Humphry Wyrley, Esq. as a candidate in the parliamentary elections against Sir Michael Biddulph and Richard Dyot in 1700, when George's father and brother supported his opponent. After the election, William complained that they had taken the liberty to 'aspers, traduce, and calumniate' him. Further accusations followed and George was involved in a public quarrel with another proctor, George Hand, in a Lichfield bookseller's in 1704. There were also accusations of proctors cheating 'country people' seeking probate. Obviously a quarrel of these dimensions, reflecting as it did on the probity of the courts could not be allowed to continue and George was accused of contempt of court. (73) Such disputes were very rare, and the case appears to have done no lasting damage to the court's standing. (see p.19)

Volume of business in the eighteenth century Consistory court

This study of the business of this court is based on the surviving cause papers, which may well provide an underestimate of the number of causes heard in any year for three reasons. Document loss is always difficult to assess, although there may have been few losses at Lichfield. Cause papers may not have been generated in all causes, particularly those heard in summary form. Finally, there were other causes which may have been listed in the court books, but again generated no papers for a variety of reasons. The annual number of causes may also be affected by the fact that papers have been grouped together by individual cause in the past, and material from several years may be filed in the same bundle with nothing appearing in the relevant years. This method of filing, however, is of major importance to research in that causes have remained predominantly intact.

The number of causes heard by these courts is not easily or accurately quantified, but the total numbers, represented by surviving papers, that passed through the Lichfield courts are shown in Fig. 2.1. They fluctuated from year to year, peaking at 234 in 1729, and again at 195 in 1778, followed by a very slow decline, down to 40 cases per year by 1820. These figures demonstrate the remarkable recovery of the church courts in the eighteenth century.

At national level, only 1700 causes were heard in the province of Canterbury in the period 1827 to 1830, and of those almost half were related to testamentary business. (74) Lichfield provided at least 8.6% of the testamentary business and 11.7% of the remaining work.

The only eighteenth-century courts that have been analysed in depth over the whole century are those of the consistory courts of York. Their work has been examined by Till, who found a decline in the number of causes heard. (75) He suggests that the critical point came in 1712-13, with the culmination of problems of personnel and management following the merging of the weakened Consistory court with that of Chancery in 1674, which had led to long delays in the completion of business. The courts were separated again the following year, but the damage had been done, and was later aggravated by the death of the register in a duel. (76) In 1713 John Aislaby resigned as register and Henry Watkinson, the chancellor, died, having been in charge of both courts for many years. The total number of causes fell from 393 in 1692-5 to 121 in 1700-01 and to 73 in 1727-28. (77)

The number of office causes passing through the Chester Consistory halved from 40 per annum in the 1680s to 20 or so in 1730, excluding testamentary business. (78) Interest in morality and defamation was replaced by pew and faculty causes in the eighteenth century, but numbers of these are not given. Addy also quotes work on the Exeter courts, although this only extended to 1707. (79)

The defamation business of the courts in the diocese of Bath and Wells, between 1733 and 1820, has been discussed by Polly Morris and some comparative material has been obtained. (80) This shows that the volume of work there was smaller than at Lichfield, though possibly proportional to the size of the diocese. The defamation business of the Consistory Court of London has been examined by Tim Meldrum for the period 1700-45. (81) The office business of the courts of Carlisle has recently been examined by Mary Kinnear, covering the period 1704-56.

(82) The results of each of the studies will be discussed in relation to the contemporary business of the Lichfield courts in the relevant chapters.

There is no single reason which triggered a falling off in business; rather, there was a long, slow decline, which will be discussed in Chapter Eight. The court books show that the number of causes heard at each session varied widely in the eighteenth century. (83) In 1718-9 (84), 44-45 causes were being handled and in 1731 there were between 148 and 151 at a comparable time of year. (85) The court books also record that excommunication and renewal of term probatory, or requests for further time to work on the cause, were the most common forms of decision taken. (86)

THE BUSINESS OF THE COURTS

The consistory courts maintained two separate legal functions - those relating to ecclesiastical business, the discipline of the clergy and their parishioners, and ecclesiastical finance at parish level. This type of cause was brought by the office of the judge, *Officium Dominum*, abbreviated to OD in the court books. They also heard causes between parties, or instance business, providing an arena in which causes with a moral content or wider social concern could be discussed.

Their second function, instance business, has been seen of lesser importance, having a lesser moral content. A. Warne has remarked that 'Increasingly the courts' time came to be taken up with business which had only a remote connection with the primary reason for their

existence, namely the government of souls'. (87) However, the Bishop agreed to correct and punish the 'unquiet, the disobedient and the animous', and this is exactly what was done when instance business is examined more closely. Many parties in instance causes were in need of the reformation of their souls and their manners had fallen short of the behaviour required in a Christian community. There was also a strong input from the community in these causes, most of which came from rural parishes where these older behavioural values were still upheld in the first half of the eighteenth century.

The court causes fell into five major categories, Office, tithes, matrimonial, defamation, and testamentary business. Each of these areas will be discussed in more detail in the chapters that follow.

The analysis of the business of the Lichfield courts has been carried out by examining their work in three sample periods. The overall volume of the work of the courts was such that it was felt that sample periods of twenty years each would give an adequate picture of their work. For each of these periods, information has been collected on the volume of each type of business, the parish of origin and the status of plaintiffs and defendants. The periods selected covered both the beginning of the eighteenth century, from 1700 to 1719, and the early nineteenth century from 1810 to 1829, and a period late in the eighteenth century when business increased, 1770 to 1789.

i) Office causes - *ex officio mero* and office promoted business.

This included disciplining the clergy or, more often, their parishioners, ensuring that levies for the maintenance of churches were paid, churchwardens and parish clerks were elected correctly and produced their accounts on time, that the correct procedures were followed in marriage services, and that immorality was punished. By the eighteenth century, citations for non-attendance, non-conformity and failure to baptise children had more or less disappeared. Academic interest has hitherto focused on the immorality business of the church courts, with its implications for the changing of moral values.

Those who refused to pay their levies towards the repairs of local churches figured largely in this diocese, as a result of the structure of large parishes with scattered townships. This vexed question produced very fiercely disputed causes from the parish of Sandiacre between 1794 and 1798, (88) and the township of Hayfield in Glossop parish between 1796 and 1805, the scattered hamlets of the latter resenting making payments to the mother church many miles away. (89)

With the exception of clandestine marriages and immorality causes, the component elements changed over the study period, to focus on administrative matters. Clerical morals were giving few problems, although occasional lapses occurred. In November 1725 Rev. Henry Karver, Vicar of Bickenhill and Rector of Little Packington in Warwickshire, was brought to the court for importuning Samuel Swinburn, an eighteen year old apprentice, to marry the maid who had

worked in the vicarage. By this time Margery Ansley 'was big with Child of a spurious Child'. Samuel, having no wish to marry the lady or bring up the vicar's child, fought hard but succumbed the following February. Karver was also accused of falsifying an oath and falsely certifying that Samuel was twenty years old. (90) The case gives a long list of machinations illustrating the pressures a cleric could impose upon his flock if he chose to do so. Morality causes were important throughout the eighteenth century in the reduction of severe financial pressures on parish poor rates, by providing some form of legal sanction against ante-nuptial pregnancy. The role of this jurisdiction in controlling the spread of sexually transmitted disease or the bastardy rate is impossible to assess.

Legally, these causes were heard in summary form. This was a quick and simple form of law which only generated a citation and sometimes a penance. The volume of this type of business was, to some extent, mediated by the fact that it could also be heard at archdeaconry visitations, where the *quorum nomina* citations record their presence. Those causes that went further were heard in plenary form, or the full form of law, although a small number of causes were heard as 'office-promoted' suits in plenary form.

ii) Instance business

This was always heard in plenary form, although in many causes only the citations remain. Very few causes continued to sentence and this has been seen as a major failing of these courts. Causes just peter out and no 'verdicts' are apparent, by which the work of the courts can be judged by twentieth century standards. The function of these courts

was simply negotiation within the criteria of the Bishop's duties. Those causes which disappeared were the ones that had been completed satisfactorily out of court. The parties had been brought together and the issues resolved, piety, justice and sobriety had been returned to the community.

a) **Tithes and Easter Offerings.** Tithe causes were part of the court jurisdiction, but by the eighteenth century much of this business had been siphoned away to those who, from 1696, could request two Justices of the Peace to issue summons againt the offender to pay claims for arrears of £2 or less. (91) The obligation to pay tithes was very much a moral one. In theory they were paid directly to the clergy and provided their sole source of income from the community that they served. To avoid the payment of one's tithes, Easter Offerings or church levies was in fact, a kind of disobedience; contrary to 'piety unto God'.

Almost a thousand tithe causes came before the courts in the three sample periods. They occupied 22.3% of the total business of the court in the early period. The proportion dropped back to 9.4% of the total business between 1770 and 1789, only involving 225 disputes. The final phase saw the total proportion rise again to 19.2% but only produced 153 causes.

These causes were brought by people from a wide range of social backgrounds; the gentry were not very prominent, and probably employed solicitors, or more powerful courts to regulate their dues. However, two gentlemen, Sherrington Davenport of Worfield, in Shropshire, (92) and Thomas Fanshawe, of Dronfield in Derbyshire,

took their rights to tithes very seriously and prosecuted large numbers of farmers in their respective parishes. (93) The Lichfield causes were often brought by incumbents against their parishioners, farmers in the main, although as the century passed there were a range of tradesmen involved who maintained an interest in farming but not in paying their dues. Several widows brought causes; prominent among them was Dorothy Howe, a widow who held the tithes of Uttoxeter, and brought 21 causes between 1693 and 1707. Her executrix, Elizabeth Degge, pursued three farmers for tithes in her task of winding up the estate. Samuel How, probably a son of Dorothy, was pursuing ten people in 1721 (94) and the vicar of the parish was suing a further two individuals in the following year. (95)

b) **Marriage.** Matrimonial causes were brought both by the office of the Judge and as instance causes. Office causes related to clandestine marriage, which continued to be viewed with disapproval and even those who had acted as witnesses to such events were taken to court. These causes could also be seen as 'contrary to piety unto God' and may also have involved 'sobriety towards ourselves', resulting in 'unquiet and animous' behaviour. Occasional references occur to incest, but this in the great majority of the cases related to marriage within the prohibited degrees, rather than the modern interpretation of the term. This type of business formed the majority of these causes until the passing of Hardwicke's Marriage Act in 1753. The purpose of this act was to eliminate clandestine marriage, and required that banns be called and that marriages be solemnised by clergymen of the Church of England.

Instance causes in this category were of two types. First, marriage as an unfulfilled contract, and second, breaking the contract itself. These involved causes, often brought by the wife against her husband, for restitution of conjugal rights or for separation from bed and board on the grounds of cruelty, or both cruelty and adultery. There was no legal divorce available except by Act of Parliament, a procedure well beyond the pockets of the average citizen.

The volume of this business in the Lichfield courts was always very small. However, many couples must simply have gone their own ways, not seeking any legal separation. Those causes that came to the courts were those where violence spilled over into the community or the sexual behaviour of one of the partners was creating local problems.

c) **Defamation.** A high proportion of instance business at Lichfield related to defamation. 1502 causes have been identified in the sample periods alone, 625 of which were heard between 1700 and 1719. This rose to 771 causes between 1770 and 1789 and fell dramatically to 106 between 1810 and 1829. Canon law upheld the right of an individual to a good name. The words spoken had to imply moral laxity, the terms 'whore' and 'whoremaster' being common, as well as rumours of pregnancy, and infection with sexually transmitted diseases. In spite of the canonical reluctance to hear causes involving mere 'hot words', many of these causes were 'alcohol-related'. There had to be an element of malice in these causes, and there were often other quarrels in the background.

There was no financial incentive to bring such cases, merely the need to restore the 'good name', usually of the woman although some men railed at being called 'whoremasters' and 'knaves'. They were all anxious to allay the development of a 'common fame' which might have led to further and deeper troubles in the community. These causes usually brought individuals from the lower levels of society to the court as defendants, including hucksters, badgers, labourers, even a cow jobber. Many tradesmen became involved after insulting their customers, particularly victuallers, where again the role of alcohol may have been important.

d) Testamentary causes. The major business of the courts however, was that of testamentary causes relating to the management of estates by executors or administrators. In some ways these causes can be seen as 'contrary to piety unto God' in that there was a moral obligation in a Christian society to honour the wishes of the dead. They could also lead to injustice to members of the family. Testamentary causes revolved around disputed wills, unpaid legacies, unadministered estates where creditors were trying to obtain some of their lost monies and 'rash administration', which had proceeded without the necessary grant of probate. (96) It also involved the election of guardians for minors who were to inherit but unable to do so until the age of 21. These causes brought in a very wide social range of individuals, from below the level of wealth required to use the prerogative courts of Canterbury or York.

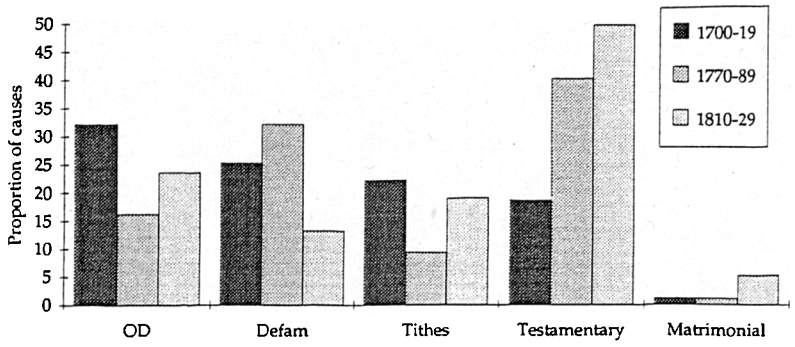


Fig. 2.2 Proportion of cause types in sample years, 1700-19, 1770-89 and 1810-29.

The overall proportions of the different types of business in the three sample periods are shown in figure 2.2. Matrimonial causes always formed the smallest proportion of the work of the courts, rising to 6% by the nineteenth century. Total office business formed the major area of work at the beginning of the eighteenth century, dipping a little towards the end of the century and rising again by the nineteenth century. The components within this changed from a predominance of immorality causes in the first period, to an increased concern with church levies later in the century. Requests for faculties dominated the nineteenth century courts. Surprisingly, the number of tithe causes was less than that of Office business, staying fairly constant at around 7-20% of their work. Defamation causes formed between 25-30% of causes in the first two periods but dropped away to around 12% by the nineteenth century. Testamentary business boomed through the century rising from 17% in the first period to 40% by the 1770s. It finally rose to 48% by the nineteenth century. The total number of causes in these study periods was 5468. (97)

For the social historian this mountain of information presents a number of problems. The mass of anecdotal data in depositions is difficult to classify and use. It does however represent the beliefs and opinions of individuals of known social groups at known dates, and in known circumstances. There are occasional cases of immense interest for the light they throw on individuals and their families or even political events, but the fact they were court cases, using the negotiative rather than criminal evidence of both plaintiff and defendant, has always to be considered. The criticism that so few causes continue to a verdict is also often seen as a problem, but that is to forget the prime purpose of the courts. A successful outcome was a negotiated settlement, not an excommunication, and many causes simply disappear, having been settled or left in abeyance by the mutal consent of the parties involved.

The implication of the decline in office business over the period has always been that the established church had given up its duty to discipline its members. As the origin of these causes lay in the community, it could equally be argued that society as a whole was becoming less willing to report immoral behaviour. The increase and maintenance of levels of instance business would suggest that in the eighteenth century the courts continued to serve as a stage for the enactment and resolution of inter-personal tensions, and the establishment of financial rights in tithe and testamentary causes. Who used these courts and why during the eighteenth century will be considered in the chapters that follow.

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44. Addy, 'The Diary of Henry Prescott' (1987), I, p.104.

45. Burn, Ecclesiastical Law, III, p.3.

46. A proctor was defined as an 'agent to conduct another's case in court'. An advocate was one who could plead on behalf of another individual.

47. Foster, Alumni Oxonienses (Oxford, 1891), 2, p. 508.

48. Till, 'Administrative System', p. 37.

49. WoRO, 719.02 BA 2670.

50. A Notary Public was 'one who confirms and attests the truth of any deeds of writings' and whose testimony is the equivalent of two witnesses, often abbreviated to N.P.

51. Floyer, Proctor's Practice p. 5.

52. Ibid., p. 6.

53. Morris, 'Defamation and sexual slander', p.154. In the Bath and Wells Act Books between 1733 and 1850, 18 proctors shared the same surname with at least one other.

54. Floyer, Proctor's Practice p. 5.

55. Dale, James Wyatt p.13. Wyatt charged half a crown a mile, which may explain the rarity of his visit to Lichfield during the refurbishment of the Cathedral.

56. WoRO, 2670. Draft of security to be given by an apparitor.

57. LJRO, B/C/5 Walmesley c Froggatt, 1685.

58. LJRO, D30/9/2/2/3.

59. Ibid., B/C/5 Walmesley c Froggatt, 1685.

60. Ibid., B/C/5 Walmesley c Froggatt, 1685, Deposition Simon Marten.

61. A.L. Reade, Johnsonian Gleanings 12 Vols (1909-52).

62. 1709-84.

63. Register of the courts from 1709 to 1751.

64. J.W. Whiston, 'Some Letters and Accounts of Michael Johnson', Trans Johnson Society (1974), pp.31-49.

65. Dictionary of National Biography 20.

66. Reade, Gleanings Pt. III, p. 174.

67. Addy, The Diary of Henry Prescott.

68. N. Tringham, 'The Chantry Priests' House in Lichfield Cathedral Close', Trans S. Staffs Arch and Hist Soc. XXVI, (1984-5), p.39.

69. Reade, Gleanings IV, p.194. Watson's widow Elizabeth Hand became the second wife of Dr. Thomas Newton, Bishop of Bristol.

70. Houston, Causes in the Court of Arches, Cause no. 6597, 1708. Contempt of court: George Newell c William Walmesley.

71. Bodleian Library, Oxford. Rawlinson MSS, B.382, ecclesiastical cause papers, Walmesley c Newell.

72. Ibid., f.574.

73. Ibid., f.578.

74. Till, 'Administrative System', p254, quoting the Report of the Ecclesiastical Courts Commission (1832).

75. Till, 'Administrative System'.

76. Ibid., p.28.

77. Ibid., p.66.

78. J. Addy, Sin and Society (1989), p.212.

79. M.G. Smith, 'Administration of the diocese of Exeter, 1689-1707', (Oxford, BD thesis, 1980).

80. Morris, 'Defamation and sexual reputation'.

81. T. Meldrum, 'A Women's Court in London: Defamation at the Bishop of London's Consistory Court, 1700-45'. The London Journal 19, 1, 1994.

82. M. Kinnear, 'The Correction Court in the Diocese of Carlisle, 1704-1756', Church History 59, 2, (1990).

83. At Lichfield the Act Books of the Courts are known as Court Books to distinguish them from the episcopal Act Books.

84. LJRO, B/C/2/93.

85. LJRO, B/C/2/97.

86. The term probatory was a period of time allowed for work to be carried out on a particular cause, especially the examination of witnesses.

87. Marshall, 'Administration of the diocese of Exeter', p.83, quoting A. Warne, Church and Society in Eighteenth Century Devon (New York, 1969), pp.84-5.

88. LJRO, B/C/5/1794-98:Church levies:Sandiacre.

89. LJRO, B/C/5/1796-1805:Church levies:Hayfield, Glossop.

90. LJRO, B/C/5/1725:Bickenhill:Office c Karver, Positions additional.

91. 7 & 8 Will III, c.6 and 34 quoted in J. Evans, The Contentious tithe: the tithe problem and English agriculture, 1750-1850 (1976), p.44.

92. Sherrington Davenport, rector of Worfield in Shropshire used both the Lichfield courts and local negotiation to settle his disputes. A copy of an agreement with his parishioners in 1758 is discussed on pages 173-4.

93. Thomas Fanshawe was the impropriator of Dronfield parish in northern Derbyshire. He took many farmers to the Lichfield court in a long series of 'copy cat' tithe causes, five of whom appealed to the Court of Arches in London between 1746 and 1751.

94. LJRO, B/C/51/1721:Samuel How c 10 parishioners.

95. LJRO, B/C/5/1722:Jackson c Bull and Bird.

96. In the late C17 there was a small amount of office business during Archbishop Sancroft's administration *sede plena* relating to the rash administration of estates.

97. Between 1700 and 1719 there were 2342 causes; between 1770 and 1789 there were 2418; and between 1810 and 1829 the number of causes had dropped to 888.

CHAPTER THREE : OFFICE BUSINESS

No city in the spacious universe
Boasts of religion more, or minds it less;
Of reformation talks and government,
Backed with an hundred Acts of Parliament,
Those useless scarecrows of neglected laws,
That miss th' effect by missing first the cause:
Thy magistrates, who should reform the town,
Punish the poor men's faults but hide their own;
Suppress the players' booths in Smithfield Fair,
But leave the Cloisters, for their wives are there,
Where all the scenes of lewdness do appear.
Defoe, 'The Reformation of Manners' (1702), (1)

And here remember on the Sabbath-day
To treat church-wardens: drams will drown your sins
And wash you white, preventive of the toil
Of a white sheet in church. Fowl, wild or tame,
Must be the parson's due, if you design
To live and sin secure.
Anon., 'The Art of Wenching', (1737) (2)

Introduction

Two extracts from the poetry of the period illustrate the popular perception of the church courts, and attitudes to morality, from very different points of view. Defoe bemoans the double standards of a society which punished the poor and ignored the crimes of those in

authority. He complains of the state of the law, and the failures of the reformers. His own activities in this field did in fact attempt to reform the morals of society, at the expense of the church courts.

The anonymous poem on the art of wenching implies that the churchwardens and clergy would hypocritically turn a blind eye to moral crime in exchange for small favours. It also indicates that having to appear in church clad in the white sheet of penance was still an unpleasant possibility, even as late as 1737. These attitudes would appear to be accurate in relation to the Lichfield courts, but the reality was more complex than either poem would suggest. The attitudes reflected in these examples present a view of the law, both common and canon, which requires further scrutiny.

Categories of business

This chapter examines changes in three major areas of business brought through the courts on behalf of the church authorities in the eighteenth century. The first related to spiritual matters and personal morality, requiring the reformation of the soul and the correction of manners. This included clandestine marriage, which will be discussed further in Chapter Five together with matrimonial causes. The second was concerned with the income due to clergy, parish clerks, churchwardens and proctors of the courts. The third involved the administration of the process of maintenance and improvement of ecclesiastical buildings, including seating in the parish church.

Routes to court

These causes were officially initiated by the Office of the judge, and thus known as Office causes. (3) The plaintiff was nominally the Bishop as part of his duty of 'correction and punishment', acting through the Chancellor or the Vicar General of the diocese, in whose name the citations for these types of business were issued. (4) Either of these officials could in fact sit as 'judge' in the court, but it must be emphasised that he was a spiritual judge, who should not technically have been a member of the laity. (5) The consistory courts could not impose fines, imprisonment or corporal punishment, they could only offer censure - *pro salute animae,* for the health of the soul. (6)

Office causes were generally heard by summary pleading, (7) and came to court by one of three routes. First, by way of presentment described as denunciation. The route of these presentments will be discussed shortly. Disciplinary causes could also be promoted by the accusation of one individual against another, *ex Officio promoto* , along the lines of instance causes. (8) Causes could also be heard as office business which were brought to court by inquisition - or the enquiry of the Judge, often described on citations as '*ex officio mero*'. (9)

Discipline for the health of the soul

Spiritual matters included the administration of discipline to both the clergy and their parishioners for a wide range of moral offences. This was often described as 'criminal' business. Fornication was referred to at Lichfield as late as 1733, as the 'detestable crime of

fornication'. This referred strictly to moral lapses that were seen as sins to be corrected by the church, and not secular criminal offences. The discipline was thus of a spiritual nature, and took one of two forms. The first was a penance, which was considered suitable for the reformation of manners, and was an apology to God, to the person offended and the community at large. This had to be performed under deliberately humiliating circumstances, with the hair about the ears, clad in a white sheet, without shoes and holding a white wand. The apology had to be made during divine service, when proceedings were ostentatiously stopped to hear the words spoken, audibly and clearly. For more serious offences this had to be repeated on three consecutive Sundays in three separate churches in the Lichfield diocese.

The reformation of the soul was achieved by a 'cooling off' period, whereby the individual was technically separated from the religious community by either suspension or excommunication, as discussed in Chapter Two. (10) Both of these punishments were administered with varying degrees of severity, relative to the seriousness of the 'offence' given.

The work of the courts in relation to spiritual matters has been examined in some detail in the early modern period, particularly between the Reformation and the late sixteenth century, and also immediately after the Restoration. (11) The 'correction of manners' is a concept that has totally disappeared, but related in the eighteenth century to such diverse problems as failure to attend church, sexual behaviour, brawling (in the sense of verbal violence), and profaning the Sabbath. The numbers and types of these causes passing through

the Lichfield courts will be examined, and their changing patterns over time.

Part I - Discipline of clergy and parishioners

a) Case studies

Office business included specific types of disciplinary cause relating to different groups in the community. The clergy could appear before the Vicar General to answer questions relating to their morality and overall behaviour. Churchwardens' appointments and their overdue accounts were pursued by their successors, to maintain the continuity of parish finances. Midwives, schoolmasters and curates had to be licensed to practise their callings, ensuring that they subscribed to the thirty-nine articles of faith. Parishioners could be denounced through the churchwardens or the clergy for immorality, brawling in the church or churchyard, bringing scandal to the Ministry, and failing to receive the Sacrament once a year, amongst a long list of other offences. (12) Many types of disciplinary cause were rarely heard, some only once in ten years. Martin Jones's findings in the immediate post-Restoration courts of Peterborough and Oxford show a preoccupation with religious uniformity until the passing of the Act of Toleration. (13)

In view of the much lower numbers at Lichfield, it is important to consider which causes reached the courts and why? The working time of the courts was finite and most causes were heard by summary pleading. Their route to court and the reasons for their arrival have

yet to be fully understood. Where further evidence from more complex causes survives in the form of cause papers, it can be demonstrated that they often arose as a result of inter-personal problems within the household. These may have spilled over into the community and become disruptive on wider scale. Some of these causes also demonstrate a blatant disregard for the church authorities which may have been the reason for their progression. This was particularly so in cases of clerical misdemeanors and those who aggressively disobeyed the instructions of the church.

One cause which should, on superficial examination have been brought as an Office cause related to a failure to baptise at Arley in Warwickshire. (14) This was an instance cause, technically outside the scope of this chapter. However, Francis Moorewood claimed that the rector, William Wright, had refused to baptise his child. If the relevant papers had not survived it could have been postulated that the rector had been acting as a result of religious motives. The cause actually arose as a result of inter-personal problems that could easily have been seen as criticism of the clergy. The court papers show that Morewood was insisting that the rector had refused baptism out of malice after Moorewood had taken him to court on another matter and thus bore him ill-will. Proof of a malicious intent was usually important in all ecclesiastical causes, implying that the action had been premeditated and not done on the spur of the moment as a result of 'hot words'. The reasons why this cause was not brought by the office of the judge is that the background was known and that the courts probably did not wish to become involved in what was a personal quarrel.

Only a handful of disciplinary causes were brought against clergymen. One began in 1707, in which John Ottiwell, curate of Dudlestone in Shropshire, was accused of swearing, cursing, and quarrelling. He was also described as 'a beginner and fomenter of frivolous and vexatious suits', and a 'frequenter of alehouses', in a cause which brought numerous witnesses into court and testimonials of support from the clergy of surrounding parishes. (15) This type of cause, where a cleric's behaviour was so bad that he was taken to court to answer for it, was very rare. It was probably a final disciplinary step, after informal pressure by his superiors had failed. John Spurr has pointed out that in the period between 1646 and 1689, 'private interviews between the parish clergy and their superiors were fundamental to the management of the church, and clerical problems rarely reached the courts'. (16) This method of discipline doubtless continued throughout the eighteenth century, leaving no trace in the records. Ottiwell's family had been involved with the courts for three years before their father was cited to appear. A defamation cause in 1704 between Elizabeth Ottiwell, a minor, and Mary Dicken might be seen as an isolated incident, (17) but two years later there was another cause relating to the laying on of violent hands in Ellesmere church in which Elizabeth Ottiwell accused Mary Dicken of brawling. (18) Elizabeth was the young daughter of John Ottiwell, clerk, curate of Dudleston and Mary the daughter of Arthur Dicken, curate of Edlaston parish. Their disputes may well have represented a long-running and embarrassing family feud.

The Ottiwell cause relating to clerical discipline was a rare example, and included alcohol, gambling and violence. Only situations where the cleric refused to conform, or created serious

problems within the parish, as in the Ottiwell cause, would have proceeded as far as the ecclesiastical courts. Although the courts themselves were relatively private, their use would indicate to those cited that their conduct was to be made public. In such cases, action by the church was required to mollify local feeling, and bring matters to a acceptable conclusion.

There were very few blatant cases of defiance recorded in the court proceedings. One of them dealt with the prosecution of the bellringers of Newcastle under Lyme in 1716. (19) The English tradition of bell-ringing was unique in Europe, and the post-Reformation churchwardens' accounts examined by Hutton show how often the bells were rung on suitable occasions during the 'ritual year'. (20) Hutton quotes David Underdown's finding, that after the civil war and the Restoration 'the gentry's desire, and the church's power to enforce strict sabbath observance declined'. (21) By the eighteenth century church bells were rung to celebrate civic and political occasions, and focused on national events, such as victories and coronations. (22) The Newcastle cause may have resulted from two factors. First, the concept of 'disobedience to superiors' as displayed in their revelling; the ringers here were prosecuted for their disobedience to the rector, the curate and the churchwardens. (23) Second, John Fenton, a burgess and local justice (elected Mayor for 1714-15), promoter of the cause, may well have had a personal axe to grind, having been accused of partiality in the recent parliamentary elections. (24) The ringers felt their celebration of the victory of Mr. Sneyd and Mr. Vernon in the election was perfectly justified but Fenton disagreed. His suit resulted in the entire bell-ringing team, all fifteen of them, appearing in court to answer a charge of profaning the church, by ringing the bells against

the wishes of Mr. Egerton the Rector, the curate and the churchwardens. The ringers each incurred expenses of £12.10s.3d., an unusually high and punitive sum. The ringers also felt a sense of injustice and they brought individual appeals against these expenses in the Court of Arches. (25)

Ex officio mero, or inquisitonal, causes were rare. In 1719 seven parishioners from Norbury (Staffordshire) were cited to appear at Lichfield for failing to frequent their parish church. The Act of Toleration of 1689 should have ended such causes by permitting freedom of worship. Either the individuals prosecuted had failed to worship at a licensed chapel on Sunday as specified in the Act, or they were Catholics not covered by the Act. Further light is thrown on the matter was by another cause heard in 1720, when James Allestree, clerk, of Norbury, was accused of Neglect of the Office of Deacon between 1717 and 1720. His presentment by the churchwardens caused further investigation to be undertaken by the judge. It was found that he had 'kept company chiefly with papists and persons excommunicated and was very much suspected to go to Mass with them and so be of their communion'. Perhaps the community and authorities had tried to calm the situation by bringing in those failing to frequent church as a warning to the clerk, who had obviously failed to mend his ways. The citation was issued on the grounds of Allestree's 'Failure to frequent church and participate in the Eucharist'. (26)

A far larger disciplinary category was immorality, and the decline of this area of court business has been interpreted as evidence for the loss of influence of the church. Till's work on the Consistory and Chancery courts of York argues a loss of confidence in the courts,

with a swing from office to instance suits as early as the 1670s and 1680s. He records only 6 immorality causes, a negligible figure, in 1703-4, and interprets this as part of the 'general decay of spiritual jurisdiction in the York diocese'. (27) The diocese covered a very large area of northern England and to judge the whole diocese on the business of the Consistory and Chancery courts is a methodology which may need revision. Other potentially comparable material comes from the diocese of Oxford and Peterborough, examined by Jones. (28) Between 1672 and 1675 there were 29 immorality causes in the Oxford diocese, and 181 in that of Peterborough. Unfortunately the data do not extend beyond 1675. Tim Meldrum in his work on the London Consistory Courts in the eighteenth century supports Lawrence Stone's interpretation of the courts as having slipped into corruption, following the general secularisation of society at the beginning of the century. (29)

There are several other feasible explanations for the apparent decline in concern for morality at York. Firstly, those causes that arrived in the York consistory courts were generally those on appeal to the metropolitan, which would be of a very different type to the average archdeaconry or consistory court cause, such as those heard at Lichfield, and probably at Oxford and Peterborough. Morality was often a very local concern and those guilty may have simply been reported to the archdeacon's visitation court. Between 1673 and 1675, 78 immorality causes were heard in the Peterborough archdeaconry court and twenty one in the consistory court. (30) The Oxford causes were heard in three courts, and were very few in number; the consistory court heard four, the archdeaconry court three and the joint court (31) two causes. (32) In the flurry of activity in the post-

Restoration period, the courts were primarily concerned with breaches of religious uniformity in the Peterborough and Oxford dioceses, to the extent that immorality was given scant attention. Jacobs' work on the Norwich consistory court shows 14 new cases of fornication and one of adultery in 1744. A decade later the number of new cases had fallen to four and one for adultery. By 1774 this type of cause had disappeared. (33) The offence ceased to be presentable to the church courts in 1787 (27.Geo.III, c.44), although Warne cites examples of causes after this date in Devon. (34)

Those causes heard in the archdeacon's court would have been brought as the result of presentments to the archdeacon's visitation twice a year, either by the churchwardens or parishioners. These presentments are usually seen as the result of observations or enquiries on the part of the churchwardens, who then reported back to the archdeacon or bishop on local misdemeanors. By virtue of being heard by summary pleading in visitation courts these causes would not appear in the Court Books of the consistory court. This administrative detail would appear to reduce the numbers of those being accused of immorality and give a false impression of a lack of interest by the church in disciplinary matters. Where causes did get as far as the consistory court, and were heard in plenary form, they probably represented the need for resolution of more complex social problems. A citation from the consistory court may also have been a catalyst to resolve the problem and avoid a detailed discussion of the events leading up to the cause. If the initial citation had not been returned, a second citation would have been issued. (35) Churchwardens' presentments were limited to the visitation process and disappeared

very quickly after the Restoration, yet there were still some offences reported to the authorities.

In the early eighteenth century antisocial sexual behaviour was still giving rise to great concern at both local and national levels. The consequences of sexual misbehaviour were of great relevance at parish level. The vicar of Wolfhampcote 'thought that it was his duty' to report in 1706 that William Shaw was having an adulterous affair with the wife of John Major, his neighbour, and boasting of Major's cuckoldry. (36) The vicar's action can be seen not only in terms of concern for morality, but as designed to halt potentially serious disputes within the community. Cuckoldry with its male to male implications was often the source of deep animosities, 'rough music' and other social disturbances. (37) It is interesting to note, however, that it was the vicar who presented Shaw, a duty that should have been carried out by the churchwardens. (38)

Events in the parish would probably have been seen in terms of the practicalities of daily life. Where these causes have produced depositions by witnesses, the causes would appear to involve other local disputes. John Wiggen, the miller of Walsall, was presented for cohabiting 'in a very lewd and scandalous manner' with Elizabeth Babb, and giving 'great offence to the parish' by doing so. (39) The couple were obviously unmarried which would have given rise to local concern. The problem was exacerbated by the claim that Elizabeth's father had been made to leave the house, and that her partner John was the executor of his will.

Mary, wife of James Paul of Chilvers Coton, who had committed adultery in 1711, probably came before the court because her scandalous behaviour was of long standing, and because she had proved impervious to informal pressures. She was accused of adultery with Henry Beighton, and it was alleged that she had urged him to abuse his wife, sell his estate and turn his children out of doors. Henry Beighton, who came from a local yeoman family, was by this time a skilled and well-known surveyor. In 1711 he proposed a new large-scale county survey of Warwickshire. (40) His work as an engineer and surveyor probably involved working in the coal mines belonging to the Newdigate family. (41) Mary had earlier attempted a similar affair with another local man, John Bradnock, and had committed adultery with John Drought. The blacksmith to the Newdigate household, Henry Bradnock, was seen to act as a go-between, and Mary's involvement with three people close to such a family, in conjunction with the very public nature of her activities, probably triggered the cause at Lichfield. She had previously been 'sharply chid' by Justice Chetwynd at Grinden, but to no effect. It is striking that the Justice had used informal pressure rather than prosecution, and that the case then went to the consistory court. (42)

In 1704 Jane Haines, spinster, of Whitchurch (Shropshire) was brought before the court accused of fornication. As the cause progressed, it transpired that she was the senior servant to Dr. Sankey, the rector, and had caught the French pox from Mr. Cutler, a singing man. She was also accused of being familiar with Mr. Bowyer, a former curate. More than 22 witnesses were called to give evidence. Jane was sent to Jacob Clews, a chirurgeon, in Nantwich for treatment and in the mean time, Mr. Cutler 'slipt away privately a back way

through the mote'. (43) Scandal so close to the rectory threatenened the good name of the minister, and left him open to gossip that he kept a bawdy house. He needed to give a very public demonstration that he had - literally - put his house in order.

The servant-master relationship quite frequently led to bastardy. In the majority of causes this involved male masters and female servants. In Lapley in 1705, for example, Elizabeth Pew was accused of immorality with John Lloyd, her master. She had had two bastard children and the relationship continued, 'to the great scandal and offence to sober persons in the neighbourhood'. (44) This scandal was probably caused not merely by the relationship between John and Elizabeth, for such affairs were common. In most such cases, the servant was dispensable and disappeared when the evidence of an illicit relationship began to show. It was the fact that John continued to live blatantly with Elizabeth which would have given offence to the neighbourhood. Support was also forthcoming from Elizabeth's family, demonstrated by the fact that her niece came visiting when she was lying in, bringing presents of chicken, apples and bacon. (45)

The arrival of pregnant girls in remote parishes for their lying-in might also provoke a vigorous response. Henry Chetham of Youlgreave sent Catherine Hallam to lie in at a 'little house on the common near Buxton', but they 'received some disturbance from the parish'. This resulted in Catherine being moved to 'a private place within a peculiar jursidiction'. (46) Robert Bateman, gent, of Youlgreave paid 3s. 6d. per week for Phebe Mattoe to lie in at Milford near Stafford in 1711. (47) Bateman appeared again before the court two years later, accused of similar behaviour with Helen Woolley (48)

Bateman was a comparatively wealthy man, and Helen's claim of paternity may have been spurious, a possible blackmail attempt. The Lichfield cause may have acted as a warning to Bateman to behave with a little more circumspection. Another reason for a cause being negotiated in the church courts may have been to defuse potentially difficult local situations, where the alternative would have been an expensive appeal to the higher temporal courts.

Occasionally, immorality causes transcended parish boundaries. In 1701, Joseph Greatorex of Derby was accused, with four other parishioners, of fornication with Ellen Harrison. Ellen was by then a prisoner in the House of Correction in Stafford accused of further offences in the Leek area. On the evidence of Sara Armet, a midwife, Ellen was transmitting pox; her only regret was that she had given the disease to a 'nice young man in Lichfield'. (49) This was a rare case in which a prostitute's activities were unmistakable - and widespread. She had been committed by a civil magistrate and yet some of her clients were being taken through the church courts, suggesting a degree of symbiosis.

b) The volume of business

Previous workers on the church courts have suggested that the church was turning a blind eye to immorality, ceasing to discipline offenders by the end of the seventeenth century. E.J. Bristow suggested a major drive against vice at this time came 'after the old medieval ecclesiastical jurisdiction over moral offences had broken down and before the secular authorities were capable of filling the breach'. (50)

Like many other historians, he was unaware of the continuing work of the courts. The office causes that have been found at Lichfield suggest that the most flagrant offences were still being investigated, but the diminishing numbers of immorality causes confirm a diminishing interest in this area. In 1701 and 1702 they formed 86.2% and 88.2% of the disciplinary area of Office business, but dropped significantly to 5%, 33%, 0 and 11.8% in 1716-19.

One possible reason for the smaller number of causes appearing in the consistory court may have been that the fight against immorality was now being spearheaded by the Societies for the Reformation of Manners. At their greatest extent at the beginning of the eighteenth century there were at least 20 Societies in London, at least 42 in the remainder of England and 13 known from Edinburgh. (51) The main aim of the Societies was to encourage moral reform by the pursuit of those guilty of vice through the use of the civil judicial system, which could impose financial penalties on those found guilty.

Evidence for the presence of these Societies in the Lichfield diocese can be found in Portus. (52) Societies in the diocese appear to have existed in Derby, Tamworth, Coventry, Shrewsbury, and a large group at Newcastle-under-Lyme in Staffordshire. The Derby society appears to have been organised by Dissenters, and received little encouragement from the local magistrates, who refused to accept their printed warrants or to record the names of those convicted. (53) The local clergy also refused to support the dissenters in their work.

The most significant factor in relation to the number of disciplinary causes passing through the Lichfield courts at the

beginning of the eighteenth century was the appointment of Edward Chandler to the see in 1717. He was an ardent supporter of the Societies for the Reformation of Manners. During his episcopate (which lasted until 1730), the number of immorality causes fell dramatically in the consistory courts. When the causes that did come forward are analysed by county, we find that a high proportion of them relate to Derbyshire. Could this be a result of a political situation in Derby which had made the work of its society less effective? Unfortunately, there are no extant records of the Justices of the Peace to examine any rise in the number of individuals brought before them.

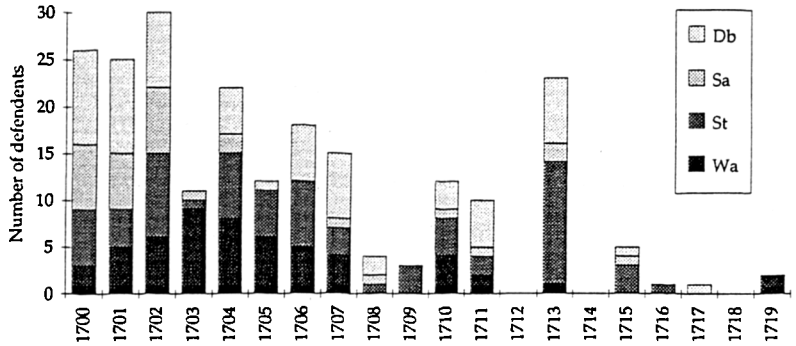

Fig. 3.1 County origins of immorality causes in the Lichfield consistory court, 1700-1719.

The Lichfield evidence for the first two decades of the century shows office business dominated by disciplinary causes, rising to 100% in 1712. (54) The cause papers would suggest that the church courts were used for those immorality causes which may have threatened to escalate into problems within the community. The converse of this would be to suggest that those individuals taken before the Justice of the Peace would have been those, more often from urban areas, whose

sexual faults were all too obvious and more easily reported anonymously. It is interesting to note that comparatively few women were brought to court for these offences (see fig. 3.2.). Immorality causes tended to bring a much higher proportion of male than female defendants before the courts, which would bring the argument of the double standard of sexual behaviour being used in these courts into question. It was obviously as offensive to the community for a man to be seen flouting common decency unchecked as it was for a woman to become pregnant. Some women did still appear in this 20 year period, and they too would appear to have been those whose lives were colourful in the extreme. There were only five years when the defendants were all male and three years when there were no causes of this type.

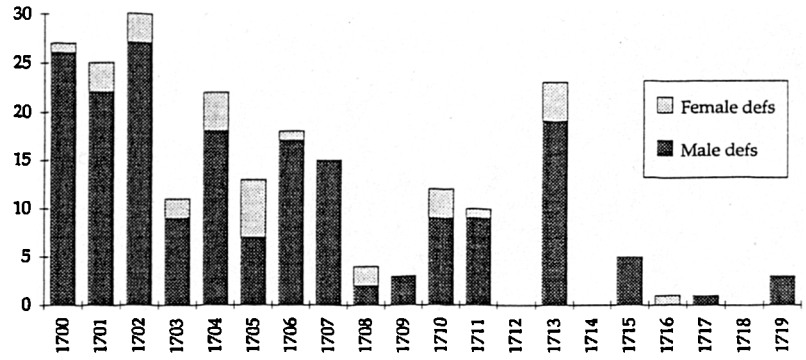

Fig. 3.2 Male and female defendants in Immorality causes, Lichfield consistory court, 1700-1719.

The spatial distribution of disciplinary causes across the diocese can be seen from fig. 3.1. These causes virtually disappeared from Shropshire from 1703 onwards, where there were a maximum of two causes a year (in 1704 and 1713), and nine years with no causes at all. Causes slowed from four a year from Warwickshire in 1707, after which there were two years with no causes and no further causes in six

of the remaining ten years of the sample. Staffordshire causes virtually ceased after 1713 with four causes in the ensuing six years. Derbyshire followed the same pattern, with only two causes in the last six years of the sample.

In the early sample (1700-1719), causes that were likely to have wider social repercussions within the parish seem to have been more likely to go through the church courts, and to end in penance in white sheets. Those causes where citations only survive may have been settled quickly out of court to avoid the repetition of the details of the offence and its discussion within the parish. The Court Books may provide further proof of the continuity of some of these causes. Bishop Chandler's optimism that the Societies for the Reformation of Manners would be able to control immorality came to nothing. Richard Smallbroke, his successor, stated in his charge to the clergy on his primary visitation in 1732-33 that 'common Christianity is treated with an avowed Contempt and open Profaneness, when an undisguised Immorality prevails so very generally'. (55)

Immorality causes tended to disappear during the middle years of the eighteenth century. Morris records 82 causes in the Bath and Wells courts between 1733 and 1760. (56) The Lichfield courts heard 92 causes over the same period, which may in fact reflect a smaller overall proportion of causes in relation to the area and population size of the diocese. By 1770-1789, the number of discipline causes had fallen to 41, of which only four were concerned with immorality, including three prosecutions of the same couple by the same cleric. This was obviously a serious case, and the behaviour of the local schoolmaster and a widow was seen as scandalous, giving cause for criticism.

Fig. 3.3 demonstrates the dramatic decline in disciplinary causes in the 1770-89 sample. Only in one year does the number rise above 20%, and in 1773 there were no disciplinary causes.

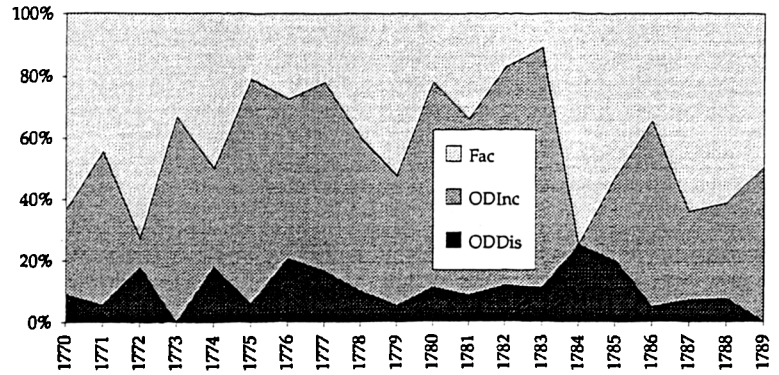

Fig. 3.3 Proportions of components of OD business in the Lichfield Consistory court, 1770-1789.
Fac - Faculty; ODInc = Income; ODDis = Discipline.

The earlier dominance of immorality causes was replaced in the Lichfield courts in the middle period (1770-1789) by those involving verbal violence - fourteen cases of brawling, or noisy quarrelling, were heard. The defendants ranged from yeomen and farmers to a widow, a servant man, a printer, an attorney and a gentleman. The punishment for brawling was described by Burn: 'If any person shall, by words only, quarrel chide or brawl in any church or churchyard; it shall be lawful unto the ordinary of the place, where the same offence shall be done, and proved by two lawful witnesses, to suspend every person so offending'. (57) Those brawls that led to physical violence were described as 'laying violent hands upon' an individual. This was serious enough in its own right, but when violent hands were applied to the clergy matters were dealt with promptly by the bishop. There were some exceptions to the rule in that 'churchwardens, or private

persons, who whip boys for playing in the church, or pull off the hats of those who obstinately refuse to take them off themselves, or gently lay their hands on those who disturb the performance of any part of divine service, and turn them out of the church, are not within the meaning of this statute'. (58)

An accusation of brawling was brought against John Braine, gentleman, by John Adamthwaite DD, of Solihull, in 1788. It was the continuation of an old score. Braine had previously been brought before the court for 'laying violent hands upon the clergy', in an office-promoted cause by John Adamthwaite in 1785. This earlier cause revolved around the habit of Adamthwaite of frequenting the house of George Lyall in Solyhull, for a glass of rum and water, to read the newspapers and engage in 'social conversation'. Adamthwaite was a bachelor, educated at Queens College, Oxford, gaining his MA in 1771. His protagonist, John Braine, was a minor but 'bred up to the law' and was acting through his lawfull guardian Richard Heydon, until November 1787 when he was described as a gentleman from Chipping Norton. The parties were well matched and the process of law was unusually and deliberately prolonged. William Wallis Mason, a Birmingham merchant and Constable for the town, was brought in 'having accepted of the office of referee for the purpose of settling the Quarrel, or matter in question'. His efforts failed and the cause continued through the Lichfield court. It then transpired that Adamthwaite, the injured party up to this point, had been involved in two fights. The first was with Mark Watislavia, a teacher of French, in the Assembly rooms at Solyhull, and the second with a clergyman 'about Christmas past at an Oyster Club' in 1787. As an applicant for the headship of the Free Grammar School in Birmingham, and having

applied for similar posts at Leeds and Coventry, involvement in such behaviour would not have enhanced his prospects. These were effectively destroyed by the decision of the court that he was to enter into a bond for £100 against further pugilism. (59)

Discipline causes dwindled further to a mere 17 in total between 1810 and 1829. Of these fourteen related to some form of verbal violence, two to clerical morality and one to the appointment of churchwardens. Two causes were brought in instance form, both for perturbation of sitting, but with the same proviso as that between Moorewood and Wright (see page 118). (60) The parties involved in one cause were a farmer and a tanner, and in the other a stone mason and a tanner. Perturbation causes usually involved some noise or physical disturbance in church, some ladies resorting to hatpins to deter would-be intruders from their pews.

The numbers of other cause types for each period are listed in Appendix 3.I. They were small in number and covered a wide range of problems, and unfortunately no comparative material is available for discussion. Office business became less varied through the eighteenth century. Violence, both verbal and physical, became the predominant subject of disciplinary causes.

Part II - INCOME TO PARISH

Causes relating to the income of the parish church were also heard as office business, rather than being taken through the secular courts. (61) It was seen as a spiritual crime not to pay levies for the

repair of the church, surplice fees, the fees due to the parish clerk, or court proctor. (62) If these dues were not collected, the custom of doing so would lapse and they would cease to be collectable, which would undermine the functioning of the church. Questions relating to the types of payment demanded from the community can be considered from the Lichfield evidence. The detailed income of the parish clergy from fees has not been studied before in an eighteenth century context, although tithe income has been examined by Evans. (63) These causes may lack the social interest of those involving personal morality but relate closely to the local influence of the church.

Canon law insisted on the custom of the parish being maintained at all times. Many of the causes relating to church income were brought as a result of the continuity of this practice, particularly tithes which will be discussed in detail in Chapter Five. Tithes were nominally part of the income of the clergy, but in view of the extent of impropriation and enclosure in the eighteenth century with many causes relating to the laity, this category of business will be discussed in a separate chapter. Easter Offerings, whilst not technically connected with tithes have, by virtue of their modus content, become associated with non-payment of tithes and are therefore included in the chapter on tithes causes.

The three main sources of income due to the parish church that could be claimed through the ecclesiastical courts, included church levies (usually for repairs), sequestration monies and churchwardens' accounts. Claims were also made by proctors and parish clerks for unpaid fees, stipend and salary.

Church levies, or leuwans, formed an increasing volume of business in the courts during the eighteenth century. Reluctance to pay these dues led to acts of parliament to make their collection easier, by the use of Justices of the Peace. (64) This can be seen as a response to the dissenters, particularly Quakers, whose conscientious opposition to tithes and levies was resolute and sustained. Many medieval churches required a continuous input of money for repairs, and some required either extension, or at least re-pewing, to cope with the potential demands of the expanding population and the activities of the ever-voracious woodworm. These levies were charged on those with property in the parish, whether they attended church or not. Naturally, the dissenting element within the parishes were reluctant to pay what the Quakers called 'Steeplehouse rates', and, as in the case of tithes, their goods were often distrained through Justices of the Peace to pay their dues. Because of educational constraints on the dissenting communities, many were forced into trade and some became wealthy property owners, which brought them into conflict with the church.

Causes over church levies might sometimes be closely related to faculty business where major improvements were to be undertaken, although smaller repairs would also generate demands for income from the churchwardens or the vestry. Evidence from executors' accounts in the later eighteenth century shows that these accounts were often paid a year or two in arrears but paid without demur from the estate of the deceased. The demolition of the church of Burton upon Trent in 1718 without permission or faculty resulted in fifteen parishioners being cited the following year for non-payment of church levies. (65) These would have been demanded to pay for the building of the new church. None of the other causes, however can be linked

to faculties of any kind and probably represent work carried out without faculty, simply as running repairs.

Alongside their refusal to pay tithes, the Quakers objected strongly to paying towards the upkeep and repair of a building that they refused to frequent. During the 1770s demands for church rates were also described as 'Steeplehouse Rates' in their Books of Sufferings. By the 1780s, causes were being brought in the courts, particularly in towns such as Birmingham, Coventry, Chesterfield, Walsall, High Ercall (Shropshire) and Duffield (Derbyshire). In Coventry, Rev. Joseph Rann, Vicar of Holy Trinity parish, was pursuing what can only be described as a vendetta against the Quakers. (66) Of the 20 causes between 1770 and 1789, Rann brought 18 of them. Joseph Ault and Joseph Freeth, both Quaker schoolmasters, and two widows, Ann Arch and Sarah Brinsden, were the main objects of his pursuit. Church levies were a source of much contention, and distrained goods in 1780 from Coventry included items such as bacon, bread and cheese, a desk, chairs, skins, pewter plates, silver spoons, and numerous other household items.

Income due to the parish church during periods of sequestration, that is when there was no incumbent present, was also considered to be part of the remit of the church courts, ensuring that the next incumbent would continue to receive levies and tithes, and that the churchwardens continued to render their accounts during these periods when the living was vacant. Naturally, causes of this type were not frequent, but the reasons for them included bankruptcy or suspension of the cleric from duty. Death and resignation were the usual reasons for the vacancy of a living in the eighteenth century.

Evidence for causes where fees, stipend and salary were demanded usually survives as citations, and the names of the defendants can sometimes be traced from earlier causes. The most frequent plaintiffs were the proctors of the court claiming unpaid fees, although some causes were brought by parish clerks claiming unpaid salaries. These causes were heard by summary pleading. A number were also brought by the clergy for unpaid surplice fees, but they were comparatively rare, implying that payment was usually made promptly.

Table 3.1, on page 129, shows OD causes relating to parochial church income in each of the sample periods. The maximum annual number of causes at the beginning of the century was 33. At this time, the predominant subjects were fees and stipend causes which reached a peak of 30 in 1705. Demands for churchwardens' accounts reached a maximum of only six per year, and that for levies peaked at 21 in 1707. It might be expected that the requests for payments of levies would follow a faculty for expensive public work on the church, such as a partial rebuilding, or re-pewing. In fact there is apparently very little link between the two types of cause. (67) Church levies causes probably relate to repair work of a minor but ongoing nature, which would require inputs of comparatively small amounts of cash. This can be deduced from the fact that those parishes with faculties seem to have comparatively few levies causes.

By 1775, the maximum number of causes was only 26 with demands for church levies predominating in nine years of the 20 year period. The maximum number was only 21 per year. In this period

there was one year with five causes and six with less than five causes of this type including one with none at all.

By the early nineteenth century, the maximum number of causes per year was only three. These were equally divided between churchwardens' accounts and demands for church levies, and there were no causes claiming fees, stipend and salary. In nine years of the twenty year sample there were no causes in this area at all. This would imply either that causes were taken up by the courts from those who could obviously afford to pay the bills, or that the extended credit habits of the previous century had been discarded. This pattern of contraction in the income business of the courts follows that already noted in the disciplinary area of court business. In both of these areas the number of types of cause declined as well as the overall numbers themselves.

'Income' business	Church levies	Churchwardens a/cs	Fees/stipend
1700-1719, n = 277	109 [37]	29 [26]	96 [41]
1770-1789, n = 196	113 [43]	5 [5]	74 [45]
1810-1829, n = 20	13 [11]	7 [5]	0

Table 3.1 Income to the parish church over three sample periods. [Figures in parentheses refer to the number of parishes involved in causes.]

Part III - FACULTIES

Faculty business was mainly concerned with the safety of the building and seats in the church. The medieval buildings themselves were often in need of financial input where foundations had given way and walls were leaning dangerously. Damp and cracks in the walls were also a problem, and permission to rebuild walls and whole churches was sometimes requested. The responsibility for the maintenance of the church and its property, through income from the parish, was well defined. The rector, cleric or lay, was responsible for the maintenance of the chancel, funded from his income from the tithes of the parish. The parishioners were responsible for the nave and the remainder of the building; funded though church levies.

The most frequent request in the eighteenth century was for seating. This generated two forms of legal activity. First, requests for faculties to confirm an existing but unused seat to an individual, or a proposed new one. Secondly, an office cause for perturbation or disturbance of sitting in a disputed pew. This type of dispute arose when those with no rights of sitting tried to muscle in on those who had, or when the seat became vacant, on the death of those who had rights there. Vacant seats were often claimed by their maintenance, by either 'beautifying it', or providing 'two basses for the said seat' for people to kneel on. (68)

The late medieval provision had given way to a motley assortment of seating in most churches - grandiose box pews were scattered amongst benches, forms and pews in the body of the church and chancel. Galleries were placed here and there offering seating to

those who chose to risk such sittings. One pew was even known as Sims' cupboard, named after the family who donated their cupboard to Melbourne church before 1747. The wainscoting from the cupboard was converted into a single seat, with four individuals holding a right of sitting in it. The right to a sitting in church was related to property ownership until the re-pewings of the eighteenth century. Those owning a number of houses had a number of seats in church. Hugh Cantrell had five seats in Melbourne (Derbyshire) church in 1787. (69) Each seat contained a number of 'sittings', usually around six, and was occupied 'promiscuously', in that no-one would sit in any particular place in the seat. The seats were often used by servants when their masters were unable to attend church. The link between property ownership and seating also led to problems when properties were sub-divided, buildings re-built or barns converted into housing.

Some degree of control was exercised over both elements in the fabric of the building, the seating and the liturgical equipment by the requirement of a faculty from the bishop. (70) Any repairs and construction work that was required in churches and for the maintenance of buildings and fitttings required episcopal permission, which also had to be sought to erect galleries, demolish old pews and build new ones, and confirm seats to individuals or groups or people. Faculties were also necessary for other alterations to ancilliary buildings, including parsonage houses and their out-buildings. The wealthier elements in the community sought permission to construct tombs or vaults for burial, often within the church. Lack of maintenance of the fabric over time, or increased pressure on seating brought forth faculties for rebuilding all or part of the church as well as complete re-pewing. Often associated with the re-pewing process were

requests to move the pulpit and reading desk to complete the internal re-organisation of the church.

The application for a faculty took the form of a citation with intimation against the cleric and the churchwardens of the parish. This process immediately opened up potential discussion of the subject. Anyone who objected to the proposals could intervene 'in their interest'. The description of the work to be carried out was usually written into the application for the faculty, and increasingly during the century, plans, often annotated, were submitted for the proposed work. When any objections had been resolved, a faculty would have been granted by the Bishop. This simply took the form of a written permission. Letters from the Bishop in London have been traced, giving consent to applications for faculties. If the parties could not agree and discussions went on too long, a prohibition would be sought and the cause go to arbitration elsewhere. One such prohibition in 1787, ended the hearing of a request for the confirmation of a seat in Melbourne church. Normally the conclusion to such a request was the simple grant of a faculty.

Faculties were used by property owning individuals to assert their status within a community by their often ostentatious isolation in church in personal pews or galleries, seating their households and friends. The few occupations that are given of the men involved in these requests are predictable: gentlemen, armigers, the occasional baronet, and the Duke of Portland. The chandler from Chesterfield may represent a 'nouveau riche' element, seeking to establish his social credibility by his own seat in church. This was only discontinued after a major re-pewing when pew rents were introduced.

Faculties for the construction of vaults and tombs were, of course, linked to those of gentry status. Faculties were also required for the extension of graveyards, and occasional requests for the exhumation of bodies were made, for reburial in other churchyards, as families moved house.

On rare occasions, such as the formation of a new parish, an Act of Parliament had to be obtained for the building of a new church, though this was a comparatively rare and urban phenomenon in the Lichfield diocese in the eighteenth century. The first major secular legislation relating to church building was an Act of Parliament passed in 1711 to fund the building of fifty new churches, the money to be raised by the taxing of coals. (71) The first church in the Lichfield diocese to be founded and built using an Act of Parliament was that of Wednesfield, in the parish of Wolverhampton, where a Chapel was built in 1747. A further chapel was built in Wolverhampton itself in 1755. This parish was a peculiar and outside the jurisdiction of the Bishop, and the use of parliamentary petition is understandable. The parish of Stone, however, in the diocese of Lichfield, also petitioned Parliament in 1753 for permission to rebuild its church. Two new chapels and burial grounds were built in Birmingham by Act of Parliament in 1772, a result possibly of increased population pressure. The chapel at Hanley was taken down and rebuilt in 1787, the parish church of St. Chad in Shrewsbury in 1789, Lane End Chapel in the parish of Stoke on Trent in 1792, all no doubt, the result of urban expansion. Tipton church, another peculiar within the diocese, was demolished and rebuilt in 1794. (72) These eight examples over a 47 year period give some indication of the comparative rarity of this procedure.

The Lichfield cause papers record 136 faculties sought between 1700 and 1719, or 32% of the 425 parishes in the diocese. Demand seems to have fluctuated, with an average of five causes per year. There was no faculty business in 1712, but demand was high in 1709 and 1711. A faculty for the confirmation of a single seat only required a single application, but later in the century when churches were re-pewed more frequently, two applications were necessary. The first was a request for official permission to remove the old seating and replace it, and the second was for permission to allot the new pews to the parishioners whose seating rights had been swept away with the old furniture.

Most of these applications for faculties were undisputed, but when parties intervened and witnesses were called, much more information could be forthcoming. Problems sometimes arose from the fact that seats were not occupied for some length of time, either by reason of their owners frequenting dissenting chapels, or the tenancy on property having lapsed. An example of the latter can be seen from a cause arising at Dilhorne in Staffordshire in 1716. Richard Stringer claimed that he had no seat to accommodate himself, his wife, their three children and two servants. Zachariah Bradley a gentleman from Caverswall, on the other hand, had purchased a house in Dilhorne on Lady Day 1715 and had no tenant in the house, 'nor did any person dwell therein except some poor children to whom he gave his leave to lodge in the said house some few weeks after Christmas 1715... having nothing but straw to lie on'. (73) Superficially, this cause would appear to be a simple one of a lack of seating, but was it brought to encourage Bradley to occupy his house and move the children out? Other causes

arose where a building had been converted to housing. At Rugby, Richard Elburrow, gentleman, petitioned for a faculty in 1704. He claimed the right of a seat belonging to a person 'distracted and out of hopes of recovery', and whose house was falling down. Richard was in the process of building a house, schoolhouse and six houses for poor widows, and was seeking seats for the School Master, 30 school children and a place for a tomb and tombstone. (74)

The most significant change in cause type in faculty business was from individual demands for confirmation of seating by the wealthier elements in the community, to requests for the construction of additional galleries and new pews by groups of individuals, suggestive of a demand for more seating. Later in the century, the demand for re-pewing of entire churches would suggest social pressures caused by population growth in the smaller towns of the counties, rather than the county towns themselves. (75) The remaining brick built Georgian houses in these towns testify to the increasing population of the period. Not only this, they suggest a new self-confidence, and civic conformity. Whether the additional seating was a response to religious fervour or civic ritual is impossible to say. In rural areas throughout the eighteenth century, certainly up to the point at which a parish was enclosed, the well-defined hierarchy, tied to property, would have been maintained. After enclosure, new farmhouses would have been built outside the settlement, which would have led to a redistribution of seating. Some faculties were hotly disputed, showing considerable social rivalry and demand for church seats. Fig 3.4 shows the relationship between confirmation of seats and the building of new pews and galleries, the former demand dominating the Lichfield courts at this period.

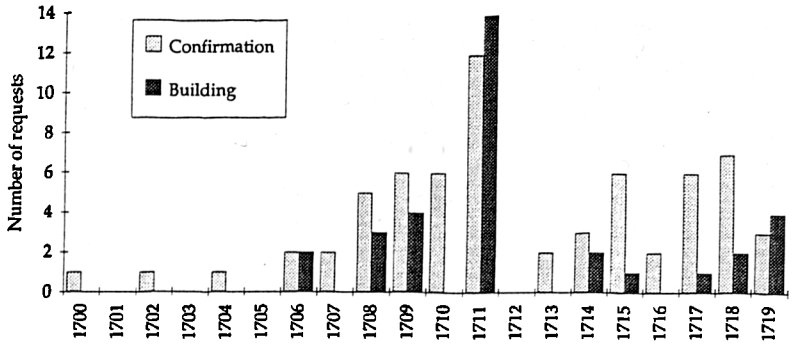

Fig. 3.4 Faculties for the building of church seats and confirmation of seats, Lichfield consistory court, 1700-1719.

This area of the work of the church courts was the only one in which women were not well represented. Only six women petitioned for faculties in the sixty years studied. Each one related to the confirmation of seats, and two were involved in the construction of a gallery. Of these six women, three were widows, two spinsters and the marital status of one unspecified.

F.C. Mather's work on Anglican worship between 1714 and 1830 describes a considerable reduction in church attendance and yet faculty causes rose to 153, or 36% of the total number of parishes, between 1770 and 1789, with a minimum of two in 1783 and a maximum of 16 in 1771. (76) These two decades saw the development of re-pewing of churches, an action that would have had a profound effect in terms of the numbers of individuals that could have been seated at each service. It would also have eliminated the long-running disputes relating to sittings and perturbation, possibly reflecting the need for increased

dignity when the church was used for civic occasions in urban areas, as described by Hutton (77) The numbers of these causes will, of course, be small in that only one faculty was required for each church, whereas confirmation of single seats could involve a great many faculties for each church. In the wake of re-pewing schemes, faculties for the re-building of individual pews and galleries tended to decline, as well as the confirmation of seats during these two decades, certainly from 1778.

The nineteenth century sample shows a comparatively simple picture, with the number of causes rising gently to 19 in 1819, before falling back to around eight per year. The type of faculty also follows a similar pattern in that the number of faculties for the confirmation of seats also rises in 1819 to a maximum of six, and then falls back. There were three years in which there were no faculties for confirmation of seats - 1812, 1824 and 1826. Only in 1829 did the number of re-pewing causes exceed all the other cause types.

Over the three sample periods the numbers of faculties granted by county and the numbers of parishes involved (shown in square brackets) can be seen in Table 3.2.

Sample years	Db, n = 119	Sa, n = 84	St, n = 105	Wa, n = 117
1700-19	45 [26]	28 [6]	48 [28]	14 [12]
1770-89	29 [22]	14 [7]	75 [32]	35 [25]
1810-29	40 [27]	18 [14]	51 [34]	44 [33]

Table 3.2 Number of faculties granted by county, with the numbers of parishes involved.

Db = Derbyshire; Sa = Shropshire; St = Staffordshire; Wa = Warwickshire. First figure records the number of faculty requests and that in square brackets the number of parishes involved. n = the number of parishes in that county under episcopal jurisdiction.

This demonstrates that the number of churches involved was increasing through the century, although in some areas particularly Salop, the number of faculties dropped. In other words, there was a drop in the number of faculties per church in terms of confirmation of individual seats and more faculties were being granted to a greater number of single churches, particularly in Warwickshire where the number trebled.

The main areas of pressure also changed, with the re-pewing and confirmation of seats in urban churches. Between 1700 and 1719 the smaller settlements in the county exhibited the main pressures on seating, rather than the older county towns. The latter settlements had been divided into smaller parishes in antiquity which often provided seating surplus to requirements. Population growth at this time took place in market towns, away from the old county towns. In Derbyshire, this was visible in Chesterfield with nine separate applications for seat confirmations from, amongst others unspecified, an armiger, a chandler and a gentleman over a ten year period.

Wirksworth also had five similar applications between 1710 and 1716, one each from a baronet, armiger and a widow. The main pressure in Shropshire was on the church at Whitchurch where ten applications for seats and galleries were requested between 1700 and 1719, of which permission to build two galleries was sought in 1708. Nine faculties were sought in Uttoxeter between 1710 and 1718, one for a vault, six for confirmation of seats and two for permission to build galleries. Five faculties for seat confirmations were requested from Walsall parish, two for the building of seats, two for other confirmations and one for the building of a gallery.

Towards the end of the century, this pattern changed. There were far fewer parishes with multiple faculties. In the period 1770-89, Chesterfield again showed pressure on seating with 4 faculties, three of which applied to seats, between 1774-78. Four other parishes in the county had two applications for faculties in this period. Shropshire showed a similar picture with threee parishes with two faculty applications, and only Newport requesting three seat confirmations in 1771. Pressures in Staffordshire were much greater, with 25 requests for confirmations of seats in Walsall between 1770-87. Those applying for seats included a chapman, a widow, an ironfounder, two victuallers, two bucklemakers and three gentlemen. Wednesbury also requested 7 faculties between 1770-88, six of which related to seating and one to an extension for the churchyard, the latter a sure sign of population expansion. The occupations of these applicants were less well recorded than those from Walsall, but included two widows and one farmer. Nine other parishes in the county requested two faculties over the period. Only two Warwickshire parishes demonstrated any seating problems. In Austrey three applications were made by a

bachelor and others between 1772-76. More positive signs of population pressure can be seen in the faculty applications from Aston by Birmingham at this time, 1772-87, when three faculties were requested, two of which related to the confirmation of seats and the final one to re-pewing of the whole church. Six other parishes requested two or more faculties during this period.

This developing picture continued further during the last period of study. Two churches in Derbyshire, Derby, St. Peter and Wirksworth showed seating problems. The parishioners of Derby St. Peter applied for six faculties betwen 1813 and 1828. Five of these related to seats, including two for galleries and one for a loft, which may well have been for an organ but may have incorporated some seating. Wirksworth continued to show signs of lack of seating capacity between 1818 and 1825. Two faculties were requested for the enlargement of the church and one for a complete re-pewing. Four other parishes in the county requested two faculties in this period.

Two parishes in Shropshire each requested three faculties, and from the remainder of the archdeaconry, only one faculty per parish was recorded. Shifnall faculties requested confirmation of seats on three occasions, two of which by the same individual - one involving a solicitor in a disputed seat case, the other an esquire. Wem parish also requested three faculties, two for seating and one for a rebuilding of the church.

Staffordshire again showed three parishes with seating problems. The first, Checkley related to three seat confirmations and one permission to construct a gallery, between 1811 and 1827. Walsall

church continued to present seating problems, two confirmations and one request to re-pew were made between 1810 and 1821. There were eight faculty requests from Wednesbury parish between 1811 and 1821, including seven for confirmation of seats and one for the internal re-organisation of the church. Unfortunately no occupations of the applicants were given. Five other parishes in the county requested two faculties, the remainder one each.

In Warwickshire, eight parishes requested two faculties and only Fillongley requested three between 1813 and 1823. This small settlement had no apparent industrial growth and its three demands for seating confirmation may simply reflect an earlier period of population growth rather than an influx of workers.

Comparative faculty business in the Norwich consistory court in the eighteenth century shows considerable differences in problems and attitudes. Only 93 faculties involved the erection of pews over the century, and Jacob feels that many may have been constructed without faculties. In Norwich there were 164 faculties granted for the sale of church bells between 1700-1801, a type of faculty unknown in the Lichfield diocese in the study period. The bells would appear to have been sold for the purpose of church maintenance, the purchase of communion plate, a singers' gallery, and a hanging of the Creed and Commandments being cited. In the second half of the century lead was sold from the roofs to raise money, producing 9 faculties in the first half of the century and 106 from 1750-1801. Falling population densities after the population pressures of the medieval period when so many large churches were created in the small Norfolk parishes may have been responsible for this state of affairs, alongside the rising

numbers of non-conformists in the diocese during the eighteenth century. (78)

Consistory court Act Books for the Exeter diocese show that Devon churches requested 51 faculties for the erection of galleries between 1737-1799, and each was was claimed to be the result of the needs of an increasing population. Permission for repewing was requested by 65 churches and another sixteen churches themselves were enlarged This diocese showed an increase in the number of bells in 39 church rings requested by faculty, although the business of a local bell-foundry would suggest that many more bells were being replaced, or rings extended than the Act Books would suggest. (79) The perception of population growth and church attendance may well be seriously at variance here, and more work is required.

Faculty business varied from diocese to diocese according to local conditions but, in summary, faculty causes in the Lichfield diocese were predominantly related to the confirmation of seats in church, or requests to construct new pews or galleries. The numbers of these fell slightly in the more rural counties of Shropshire and Derbyshire and rose in Warwickshire and particularly in Staffordshire. Interestingly enough, there were comparatively few requests from Birmingham at this time. From the faculty evidence, pressure for seating arose in the smaller market towns of the county, rather than in the county towns themselves. Overall demand for faculties fell in rural parishes over the entire period. This lack of demand for faculties, together with the comparatively small numbers requested in relation to the number of parishes in each county would suggest one of three explanations. Perhaps the old seating provision was adequate in most rural areas, or

additional seating was being installed without permission. Or thirdly, the answer may lie in declining attendance at church. This would be almost impossible to prove in small rural parishes, but the second trend was frequently noted throughout the eighteenth century.

Summary

The office business of the courts changed its character during the eighteenth century from involvement with the human failings of immorality and clandestine marriage to a concern with the buildings and seating of the parishioners. The complex problems arising from property history, conversion and sub-division of property all put pressure on archaic seating patterns. Re-pewing would have solved ownership and perturbation disputes once and for all and provided a source of income in the form of pew rents.

The *quorum nomina* citations to the archdeacons' visitation courts contain references to those suspected of immorality and this may have been where causes were heard from the second quarter of the eighteenth century. The effects of episcopal involvement in the Society for the Reformation of Manners may have diverted some of these causes to the civil authorities, who took less and less interest in them until the 1787 Act of Parliament finally did away with the ecclesiastical offence.

The question of church seating and repairs became more pressing in terms of the community. This change was noted by Till in

the York courts, and seems to have been typical of the work of the courts as a whole. When the overall business of the Office is compared with that of instance business, it seems to have maintained around 25% of the total business, and in excess of that taken up by tithe causes.

Perhaps the most interesting finding is the extent to which OD business survived. While Marshall suggests that the church 'lost its grip on the daily lives of the people of Oxfordshire, Herefordshire and Shropshire' by the 1760s, the Lichfield evidence would suggest that the community was using the court in different ways, to suit their changing needs. (80)

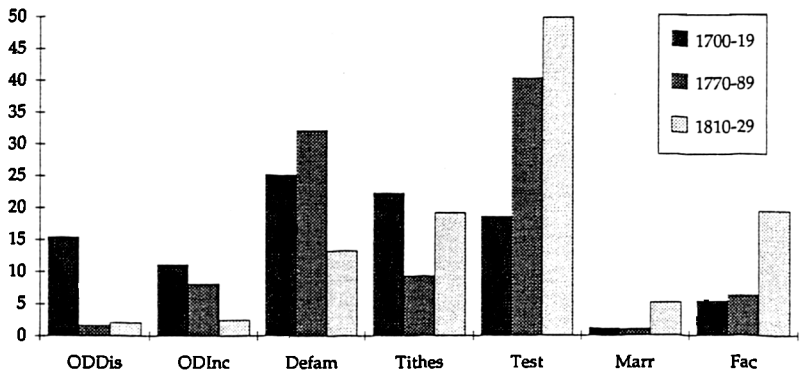

Fig. 3.5. Proportion of cause types by sample years, 1700-19, 1770-89 and 1810-29.

References:

1. Daniel Defoe, From 'Reformation of Manners', (1702) in R. Lonsdale, The New Oxford Book of Eighteenth Century Verse (Oxford, 1984), p.33.

2. 'The Art of Wenching', (1737), ibid., p.299.
3. *Officium Dominum*, usually abbreviated to OD.
4. In those dioceses where the office was been combined with that of the Official Principal.
5. The question of the laity acting as Judges in the spiritual court led to much criticism of the church courts in the sixteenth century. By the eighteenth century, the problem had been resolved, and all judges were graduates, often of civil and canon law.
6. R. Grey, A System of English Ecclesiastical Law (1730), p.379.
7. A quick and simplified form of pleading which produced few documents compared with the full or plenary form; see A. Tarver, Church Court Records (1995), p.2.
8. This term also describes churchwardens' presentments made at both archdiaconal and episcopal visitations and heard at visitation courts.
9. Grey, System of Ecclesiastical Law, p. 378. The mere office of the judge in this case implying his official interest rather than that of a third party.
10. See page 49 for definitions of suspension and excommunication.
11. Ingram, Church courts, Sex and Marriage; Houlbrooke, Church Courts and the People and Jones, 'The Ecclesiastical Courts'.
12. See Appendix 3.1.
13. Jones, 'The Ecclesiastical Courts'.
14. LJRO, B/C/5/1704/Failure to baptise:Arley:Moorewood c Wright.
15. LJRO, B/C/5/Clergy discipline:Ellesmere:OD promoted Dicken c Ottiwell.
16. J. Spurr, The Restoration Church of England, 1646-1689 (New Haven, 1991), p. 189.

17. LJRO, B/C/5/1704/Defamation:Ellesmere: Ottiwell c Dicken.
18. LJRO, B/C/5/1706/Brawling:Ellesmere: Ottiwell c Dicken.
19. LJRO, B/C/5/1716/Profaning the church: Newcastle-under-Lyme:OD promoted Fenton c Allin Ancors junior, *et al.*
20. R. Hutton, The rise and fall of merry England: the ritual year, 1400-1700 (Oxford, 1994), Chapter 7.
21. Hutton, Rise and fall p.227, quoting David Underdown, 'Revel, Riot and Rebellion' p.281.
22. Ibid., p.230.
23. Ibid., p.231.
24. T. Pape, Newcastle-under-Lyme from the Restoration to 1760. Photocopy of typescript from Keele University, 1973, p.162.
25. 11 of those taken before the Lichfield courts appealed to the Court of Arches in 1716.
26. LJRO, B/C/5/1719/Norbury:Failure to frequent church: OD c Richard Mole *et al.*
27. Till, 'Administrative system', pp.70-73.
28. Jones, 'The Ecclesiastical Courts'.
29. Tim Meldrum, 'A Women's Court in London: Defamation at the Bishop of London's Consistory Court, 1700-45', The London Journal 19, 1, 1994, p.3.
30. Jones, 'The Ecclesiastical Courts', p.173.
31. Where it is impossible to determine from the Act Books which court is hearing the causes.
32. Jones, 'The Ecclesiastical Courts', p.172.
33. Jacob, 'Clergy and Society', p.247.
34. Warne, Church and Society, p.78.
35. Ibid., p.79.
36. LJRO, B/C/5/1706/Defamation/Wolfhampcote:OD c

William Shaw.

37. Ingram, Church courts, Sex and Marriage p.63.

38. This failure to present the parties should have resulted in the appearance of the churchwardens in court.

39. LJRO, B/C/5/1706/Defamation/Walsall:OD c Wiggen.

40. P.D.A. Hardy and H. Thorpe, The Printed Maps of Warwickshire 1576-1900 (1959), pp.20-21.

41. B. Capp, Astrology and the popular press, English almanacs 1500-1800 (1979), p.296.

42. LJRO, B/C/5/1711/Immorality/Chilvers Coton:OD c Paul.

43. LJRO, B/C/5/1704/Immorality/Whitchurch:OD c Haines.

44. Used not in its twentieth century sense of temperance but in the eighteenth century sense of self-restraint.

45. LJRO, B/C/5/1705/Immorality/Lapley:OD c Pew.

46. LJRO, B/C/5/1711/Immorality/Youlgreave:OD c Chetham.

47. LJRO, B/C/5/1711/Immorality/Youlgreave:OD c Bateman.

48. LJRO, B/C/5/1713/Immorality/Youlgreave:OD c Bateman.

49. LJRO, B/C/5/1701/Immorality/Derby:OD c Greatorex.

50. E.J. Bristow, Vice and Vigilance, purity movements in Britain since 1700 (Dublin, 1977), p.3.

51. Bristow, Vice and Vigilance pp.18-9.

52. G.V. Portus, *Caritas Anglicana* (1912), pp.126-7. Societies can be traced through the correspondence and MSS of the SPCK.

53. Portus, *Caritas Anglicana* pp.117-118.

54. Reflecting the most urgent causes which were the only ones heard that year.

55. WSL, pBOX/L/2/13/6/1.

56. Morris, 'Defamation and sexual reputation', p.187.

57. Burn, Ecclesiastical Law I, p.390. They would have been forbidden to enter the church.

58. Burn, Ecclesiastical Law I, pp.390-391.

59. LJRO, B/C/5/1788/Solihull/Brawling:OD prom Adamthwaite c Braine.

60. Included in this category of business by virtue of the use of either physical or verbal violence in church.

61. These causes were concerned with the parish church, not the established church *per se*.

62. These were described by Burn as offerings, although by the seventeenth century they were described in glebe terriers as fees.

63. E.J. Evans, The Contentious Tithe (1976); E.J. Evans, 'Some reasons for the growth of English rural Anti-Clericalism, c.1750-c.1850', Past and Present 66 (1975).

64. Act for the Recovery of Tithes and Church Rates, 1813.

65. LJRO, B/C/5/1718/Burton upon Trent:Church levies:Griffith Vaughan, Archdeacon of Stafford c William Woodcock clerk and George Hayne, gent.

66. LJRO, B/C/5/1771/Easter Offerings and B/C/5/1780-1, and 1784-6-7-9.

67. Many of the faculties passing through Lichfield related to the confirmation of pews, to individuals who would have had to pay for both the confirmation.

68. LJRO, B/C/5/1709/Faculty:Chesterfield, and B/C/5/1787/Faculty:Melbourne. A bass was a kneeler made from matting sewn together with wool.

69. LJRO, B/C/5/1787/Faculty:Melbourne.

70. WSL, pBOX/L/2/13/6/1 Smallbroke's charge to the clergy in 1732, emphasised the role of the bishop in the maintenance of church structures.

71. B.F.L. Clarke, The building of the eighteenth century church (1963), p.104.

72. Clarke, The building of the eighteenth century church Appendix II, pp.216-224.

73. LJRO, B/C/5/1716/Dilhorne:Faculty, confirmation:Stringer c Bradley.

74. LJRO, B/C/5/1704/Rugby:Faculty:Elburrow c Minister and Churchwardens.

75. N. Tringham, 'The Chantry Priests' House in Lichfield Cathedral Close', Trans S. Staffs Arch and Hist Soc. XXVI, (1984-5).

76. F.C. Mather, 'Georgian churchmanship reconsidered: some variations in Anglican public worship, 1714-1830', Journal of Ecclesiastical History 36, 2 (1985).

77. Hutton, The rise and fall of merry England, Chapter 7.

78. Jacob, 'Clergy and Society', p.233.

79. A. Warne, Church and society in eighteenth century Devon (New York, 1969), p.58.

80. W. Marshall, 'Administration of the diocese of Hereford and Oxford', p.88.

CHAPTER FOUR : TITHES AND EASTER OFFERINGS

Summer attends them with fresh troubles plied;
His breeches hung aloft for winter's wear,
He spies the flocks fly the returning tide,
And every tenth he wishes to his share:
Now to the hayfield trudge the hapless pair,
And, if they kindly treat the country folk,
They compliment his rector with the biggest cock.
Henry Taylor, 'The Country Curate', (1737). (1)

Introduction

Henry Taylor's poem about the country curate was written from his standpoint as a newly instituted bachelor rector, who had yet to learn the intricacies of the tithe system at first hand. (2) His poem is full of ironies. The country curate would most certainly have been aware of the problems of payment when he began his career in the church, and would merely have been paid a small stipend by his superior. However kindly the country curate and his wife treated the parishioners, they would not have received tithes of hay. The rector, lay or cleric, would have been entitled to the great tithes, probably in kind, of corn and grain, and country folk would not have complimented him with the biggest cock, for the selection of the tenth would have been purely random. (3) Taylor's apparent ignorance of the operation of the tithing system is matched in much modern historical writing, which shows little interest in the subject.

The tithing system, it has often been noted, was viewed as offensive by Non-conformists, a form of additional taxation by farmers and ignored by townspeople, but it has seldom been examined in terms of its social mechanics. W.G. Hoskins considered it a 'somewhat arid field of enquiry'. (4) The purpose of this chapter is to identify the types of disputes that arose over tithes, the numbers of disputes in the diocese as a whole, and their proportion of the overall business of the courts.

The system of paying one tenth of the parish crops for the support of the clergy originated in Europe in the early medieval period, and in the eighth century the Capitulary of Herstal of 779 insisted upon the universal payment of tithes to finance the activities of the Christian community. (5) Tithes in France under the *ancien regime* were aptly described as 'God's share'. The payments, originally totally in kind from each farmer, were intended not only to support the incumbent, but also to be used for charitable purposes. Ladurie states that tithes were 'based on custom rather than on rigid laws, it was a living constitution liable to change'. (6)

English medieval farming was stucturally similar to that of Northern Germany and France. The system was eminently suitable for taxation by tithing in kind, in that open fields were farmed by the community as a whole across the English Midlands. The medieval community itself was usually comparatively small, and involved in growing a limited range of crops. The open fields were tightly regulated and it would have been difficult for any member of the group to opt out of the system of tithe payment. More importantly the

community was united in its religious beliefs, not only in England, but across northern Europe. The clergy were part of the community in daily life, acting as a direct intermediary between the people and their God. In England, non-payment of tithes could result in excommunication, under the terms of Guthrum's treaty of 994 in England. (7) Payment of tithes in kind was manageable at this scale of population density and type of agricultural production. (8)

The great tithes represented a major source of income for those holding the right to collect them. Vicarial tithes were claimed according to the custom of the individual parish, and represented an ongoing income of small but continuous payments through the year. The important legal significance from the point of view of the church courts was that the custom of payment had to be maintained continuously, year on year. If payment was allowed to lapse for any length of time, then the custom of the parish would have been broken. The phrase 'beyond the memory of man' was a key one in this context, used in the libels to every tithe cause. The memory of man was taken to extend back 40 years. The perceived 'eighteenth century reverence for memory, typified by the summons of the oldest male inhabitant to testify in tithe causes', described by Morris, (9) was in fact, a social and legal necessity, whereby the custom of the parish was seen to be maintained by those old enough to remember it. Their evidence was vitally important in arbitration and court cases.

The tithe system survived the Reformation with little change, although the dissolution of the monasteries and the subsequent acquisition of many episcopal estates by the crown meant that many tithes passed into lay hands. The civil war brought a major challenge

to tithes, but the system survived unscathed. Historians have seldom examined tithe disputes in their own right in the early modern period, and eighteenth century disputes in the church courts have rarely been considered in their legal context, or even as a subject for investigation. (10) Recent work on post-Restoration tithes has been undertaken by three scholars. Eric Evans wrote a thesis on the history of tithes in Staffordshire and an article on glebe terriers and tithe disputes, (11) W.R. Ward published an article on tithes in nineteenth century England, (12) and Bill Jacob included some information on tithes in his thesis on the Norfolk clergy in the eighteenth century. (13) The number of tithe causes passing through three courts in the diocese of Bath and Wells can also be traced through Polly Morris's thesis on defamation. (14)

Much has been written on eighteenth century agriculture in relation to its improvement through the process of enclosure, and the commuting of great tithes. (15) The amount of land commuted for tithe, usually only the rectorial or great tithe, has been examined, though comparatively little consideration has been given to tithes paid in kind and vicarial tithes. Many of these have been assumed to have been extinguished, although Evans has demonstrated that they continued to be paid throughout the eighteenth century. (16) Other forms of dispute heard by the church courts were intra-familial or between unrelated individuals and emanated from within the community, as a response to a range of everyday problems. Tithe disputes present two different sets of tensions. Those between the parishioners and the impropriator or his lessee/farmer of tithes can be seen as disputes over the tithing obligations of a parishioner or a group of parishioners. From the ecclesiastical point of view, the most serious

and destructive social tensions were those between clergy and their parishioners.

These tensions were aggravated by changing agricultural practices and the resulting problems of tithe collection. Enclosure through the eighteenth century increased the size of farm holdings, but these larger holdings were quite often devoted to the fattening of stock rather than its multiplication. (17) Enclosure of the commons and waste pushed those with little land into industrial production to enhance their incomes. The number of farmers able to provide small tithes from their holdings fell in parish following enclosure. New crops were being grown and new methods of stock rearing led to new forms of tithe being established to accommodate them. From the end of the seventeenth century the clergy were increasingly willing to commute all or part of their tithe income for cash in the form of an overall modus, to save the time and problems of collection in kind. This was an annual fixed payment, which slowly ceased to bear any relationship to the increased value of produce after a few years. In some parishes, individual agreements with farmers, known as compositions, were negotiated for all or specific items of their produce. Part of the enclosure process involved the exchange of tithe rights for land and many parish clergy gained handsome quantities of land in exchange for outdated moduses which were almost impossible to increase in value. In many parishes, it was the lay rector who benefited from enclosure, leaving the small tithes for the vicar to collect, either in kind, by composition with individuals or through an overall modus in the parish.

Alongside changing patterns of agricultural production, the religious alignment of the community itself was also changing. Tithe disputes might now reflect elements of moral disagreement with the principle of tithes. Following the Act of Toleration, an increasing number of people supported other denominations, and resented paying to maintain a minister whose authority they did not recognise.

Eric Evans' work on anti-clericalism in the late eighteenth century highlights some of the reasons for tithe disputes in this later period. He shows how disputes over new crops, such as potatoes, brought the lower levels of society into conflict with the clergy. The increase in clerical income after enclosure was also divisive in village society. (18) It must also be remembered that the clergy were becoming increasingly separated from their flock by education, wealth, and the intellectual nature of their concept of religion.

A i) Tithes

a) Areas of dispute

Tithes formed the major part of a tri-partite system of ecclesiastical demands upon the community from the medieval period, extending down though the eighteenth century. Payments were needed for three purposes.

First, tithes were the main source of clerical income, particularly where there was no glebe land, and their payment throughout the year was critically important to the clergy. (19) The support of the clergy was followed by the need to maintain the ecclesiastical buildings, including

the incumbent's house and barns; the church nave, and the church fittings, including the bells, were the responsibility of the community through the payment of chuch rates, levies or leuwans. This money was raised within the community. The amounts to be paid were determined by the vestry, and related to those whose land holdings ensured them a seat in church. Non-payment of dues was a matter for the Office of the Judge, at the instigation of the churchwardens, and has been discussed in Chapter 3. The repair of the chancel of the church was the responsibility of the rector, either lay or clerical, nominally funded from his income from the great tithes. Finally, the day to day running of the church required the provision of bread and wine for the communion, through the collection of Easter Offerings. Each of these three areas contained elements of potential strife, particularly after the Reformation, which increased through the eighteenth century, with the rise of dissent and questioning of the rights of the established church.

The necessity for continuity led to the sequestration of livings following the death of the incumbent and the collection of tithes by churchwardens. (20) The widow of the deceased tithe gatherer was entitled to collect outstanding tithes as part of her husband's estate. These were claimed by the widows of the clergy, proprietors or farmers/lessees of tithe. Dorothy Howe of Uttoxeter brought eight causes through the Lichfield courts between 1700 and 1707. (21) Following Dorothy's death, her sole executrix, Elizabeth Degge, brought a further four causes in 1709. Three of the twelve defendants involved in this series of disputes came from other parishes, and obviously held land in Uttoxeter. None of the defendants appeared more than once,

implying that some form of agreement had been reached, or that the case had been transferred to the civil courts.

Tithe demands could be made by both the clergy and laity and causes were heard by both types of plaintiff in the church courts. Both clergy and laity rented out their rights to collect tithes to individuals known as farmers of tithes, or lessees. (22) Those renting the right to collection were more likely than others to collect their tithes assiduously, having paid for the right to do so, with the explicit intention of making a profit. (23) Collection by the laity guaranteed financial support for the clergy and distanced them from the problems of tithe collection. The physical task was time-consuming and potentially contentious. Notice had to be given of the separation of the tithe, and it was necessary for the owner, impropriator or farmer/lessee to be present at the specified time to observe the process. The system had to be seen to be absolutely open, and leave no potential for complaint. By the eighteenth century, it was often necessary to negotiate rights of way to access the tithes and employ assistants and waggons to remove the crop.

Tithes were quite often collected in kind up to the civil war, but the extent of the practice has yet to be quantified after the Restoration. Customs varied between parishes. As a result of their ephemeral nature, few tithe books survive but it would appear that individual piecemeal agreements between clergy and farmers became more common, which meant that money changed hands, rather than agricultural produce. (24) These arrangments were complex and detailed, and required close scrutiny by the minister or his representatives. A paper listing the tithing of lambs, wool, geese and

pigs in the parish of Leigh in 1745 shows that parishioners were paying money payments at the rate of one tithe goose from between 8 and 16 birds. Parishioners were required to pay 6d per tithe goose to the vicar as Easter Offerings. The minister accordingly kept a close watch on the goose population of the village. The parishioners also informed on each other. One was reported to be keeping three extra geese belonging to her son, and another had seven geese according to her neighbours, but had not declared them. (25) This system demanded constant contact with the community as well as tact and diplomacy to maintain the clerical livelihood.

b) Changing agriculture in the eighteenth century

Enclosure by both Act of Parliament and private agreement took place with increasing speed from the middle of the eighteenth century down to the nineteenth century. This was often proposed as a form of improvement to the agriculture of the parish, and took two forms. The first involved the enclosure of the commons and the waste, or other lands not yet taken into cultivation. This type of enclosure would have had little effect on tithe revenues in that the land would not be tithable for seven years. (26) Not only that, land was left waste for good reason, usually that the soil was poor. The second form involved the enclosure and re-allotment of the holdings of the common fields themselves. The enclosure of land in the open fields had much greater effect on clerical income, in that farming became more profitable in the long term. In many parishes, this provided an extra bonus as tithe payments were often commuted into land in the newly enclosed fields, doubling or even trebling the area of the glebe.

This became a much more profitable holding, often adding areas of better quality land and forming a single unit.

It has been calculated that one-seventh or one-eighth of the parish acreage was regarded as suitable recompense for the loss of tithe revenues in the earlier (and unspecified) period of parliamentary enclosure. This rose over time to 'one-fifth of the arable and one-ninth of the pasture', when gross values were considered rather than net. (27) In the Lichfield diocese the average increase in glebe areas in Derbyshire (n=12 parishes) and Warwickshire (n=108 parishes) was in the region of 100 acres per parish. (28)

Land owners generally perceived tithe payments as an immense burden on the newly enclosed land and its potential profits, and were prepared to pay a high 'one-off' price for the commutation of tithes. This would ensure that annual payments and also potential law suits that could arise from defaults would cease. Land owners were even willing to go to the expense of ring fencing the tithe owners' land at some considerable cost. The extent of commutation has been calculated by Ward, who estimated that of the 3,128 parliamentary enclosure acts between 1757 and 1835, 70.9% saw commuted tithes exchanged for land. (29) Rates of enclosure varied across the diocese. Shropshire contributed the smallest number of tithe disputes. It was an area of old enclosure with an ever decreasing area of common fields being enclosed by private agreements. Parliamentary enclosure only accounted for 7.5% of the area enclosed by this method. (30) Of the 51 Enclosure Awards relating to Shropshire which passed through parliament between 1765 and 1850, only seven included open field land. (31)

Tithe problems tended to linger on in unenclosed parishes where the collection of produce or money was in the hands of farmers/lessees of tithes. They also continued to arise over the payment of small tithes to the clergy in those parishes where lay rectors had increased their holdings. An additional problem was that of parishes that had only been partially enclosed and in these areas, tithe payments were due from some parts of the parish and not from others. Naturally, this was a source of constant friction which could generate tithe disputes for several decades.

c) Income from tithes

Apart from those clerics with private resources, or the ingenuity and capacity to run their own schools, (32) the clergy were supported between the medieval period and the eighteenth century by four potential sources of income, two directly from cash and two involving agriculture. The cash element included surplice fees and Easter offerings. Income from these sources was dependent upon the size of the population in the parish. The agricultural element included glebe land, which could provide income, and tithes from produce grown in the parish. Where glebe land existed, it could either be farmed 'in hand' or rented out by non-resident clergy to provide a cash income.

The income from rites of passage and Easter offerings was directly related to the population size of the parish. Easter offerings were small payments, usually in the region of 2d from each communicant, ostensibly for the provision of communion wine and

bread. Over a long period of time they came to include small modus payments which were technically related to tithes. These included 'garden' and 'hearth' or 'smoke' pennies paid in lieu of tithes on garden produce and firewood. (33) The fees that could be collected were very small and formed an almost negligible element in clerical income. Evans noted that Easter offerings to be paid for servants in 1830 were in the range of 4d for each man and 3d for every maid. (34) They were hardly worth the trouble of collection, but to have ceased to pursue them would have meant that the right to collect them would have been lost.

d) Tithe disputes

Evans has argued that tithe disputes were 'endemic in British society'. (35) They were certainly numerous, but in a society where more than 70% of the population still lived in rural areas and worked the land to some extent, the number can be seen in a more reliable context. (36) Out of a total of 425 parishes in the Lichfield diocese under episcopal jurisdiction 176 (41.4%) brought causes to court in the sample periods. (37) There is no evidence of the number of causes that were settled before matters came to court, nor are there any figures for the number of disputes involving small sums of £2 or less, which were settled by the local Justice of the Peace.

The 'ground rules' of tithe rights were set out in the glebe terriers of a parish. Both Bishop Lloyd and Bishop Smallbroke urged their clergy to search out their glebe terriers, to ensure that their rights were sufficiently defined to prevent litigation. (38) The tithe rights of a parish were listed along very broad lines, giving the impression to the

historian of single annual payments for two or three items. In reality the processes were extremely complex. (39) The actual process of selection and separation of tithes was subject to the traditional processes and negotiation in each parish. Stock had to be penned in groups of ten and one or two animals each could be removed by the farmer and the tithe gatherer before one tithe animal was selected from the remainder. Great tithes were separated more randomly in that the tenth unit was subject to tithe - be it stook or windlath. (40) Payments appear to have been made continuously through the year. Tithe payments were occasionally due to incumbents or proprietors from neighbouring parishes, and a number of disputes reflect this fact. (41)

One method of avoiding disputes was the keeping of meticulous records of tithe receipts. These records were deemed to be ephemeral and usually destroyed after a few years. However, two contemporary mid-eighteenth century books survive for Staffordshire parishes. These contain a wide range of notes, which give insights into the problems of tithe collection. John Dearle's tithe book for the parish of Baswich contained a 'Form of Acquittance to be given to the Tenants of Mr. Hodgetts'. A number of receipts were listed for sums of fifteen shillings for compositions for Grass 'naturally growing of itself on the land of Mr. Hodgetts .....Clover Rye-grass and the like excepted'. (42)

The Leigh tithe book, 1744-1747, (43) records the fact 'This year's Tithe was forgiven at my father's Desire' after one of the earliest entries. Tithes were occasionally 'forgiven' or 'abated' throughout the book. Clerics were perfectly entitled to do this, and sometimes did so in cases of economic hardship. Impropriators would have been more circumspect about such acts of charity, and farmers or lessees of tithe

would certainly not have done so. The purpose of renting tithes was to make a profit, and to neglect their collection outright over a number of years would have weakened the case for tithe payment. This would eventually have led to the forfeit of the right to the goods or monies.

In spite of the fact that the range of legal redress available to the tithe holder was extensive by the eighteenth century, the old system of arbitration was still used. An agreement made through this process has survived amongst papers of the Davenport family of Worfield in Shropshire, who held the advowson and tithes of the parish between 1548 and 1771. (44) A dispute was settled in April 1758 as a result of arbitration between the landowners and parishioners and Sherrington Davenport, rector of the parish. The arbitrators were the Rev. William Davenport, Doctor of Laws from Bredon in Worcestershire, and Sir Thomas Whitemore of Apley in Shropshire. These gentlemen were chosen by Sherrington Davenport and John Eykin of Ackleton, gentleman, on behalf of the landowners and parishioners or Worfield. Thirteen signatures were made beside the seals at the bottom of the document. (45)

For their part the parishioners agreed that clover hay was to be tithed by an annual modus which was due to the vicar of the parish. Secondly, the question of agistment for unprofitable cattle and sheep not sheared in the parish was raised. (46) The parishioners agreed that sheep depastured on the commons and parish pastures for more than three months after shearing, which were not to be sheared the following year (having been either slaughtered or sold on), would pay the usual composition of 1s. 8d per score of sheep [presumably per week]. Those sheep which were being simply fed for slaughter and not

sheared (and not even generating tithe income from their fleeces) were to pay 3d. per score per week. Cattle for slaughter were to be charged at 2d. per head per beast per week for every week they were feeding in the parish. Finally, nothing was to be paid for the agistment of cattle reared or kept 'for the plough or pail', which had been exempt from tithe since medieval times.

The impropriators won the right to the tithes of wood and clover seed. It is interesting to note that a modus had been negotiated with 'many estates' in the parish for the latter tithe, though it had been granted away 'for many estates in the parish by a former impropriator'. This would suggest that not all farms, or even parishioners, within a parish paid the same rates of tithes for the same crops to the same tithe owner. Much depended upon the negotiative skills of both parties.

The impropriators of Worfield agreed that the tithe of turnips was not due in kind, unless they were for sale at market - in other words, as a major crop within the fields of the parish. (47) This issue was further complicated by the fact that turnips in themselves were not always for human consumption but for fattening stock, which did not take the form of traditional agistment. (48) No agistment tithe was to be due to the impropriators for cattle or sheep depastured or fed on the aftermath grass (49) or edgrave grass (*sic*, known elsewhere as eddish), and grass that grew upon the stubble after grain crops had been harvested. In this case, the medieval principle that tithe could not be claimed on the same piece of land twice in the same year was still being applied to grass.

The complexity of these rules, when applied to a number of tenant farmers, whose tenancies were comparatively transient, would inevitably lead to conflict at some point, unless very detailed payment records were kept by the incumbent or impropriator and the payments were themselves forthcoming annually. This arbitration followed a cause in the Lichfield courts for the same items.

Those who claimed the tithes of a parish, whether clerics or laity, would need a very detailed knowledge of local farms, their tenants, lengths of leases, as well as a good knowledge of agricultural practices. The financial success of a new incumbent would depend upon his capacity to find out who paid what tithes, upon what basis and to whom. John Dearle wisely gathered information about tithes paid to his predecessors. 'My predecessor Mr. Hitcock's sometimes gathered Tyth Lambs, sometimes sold them to the several Owners of the Flocks, according to their Value from five Groats to 3s.6d. a Lamb. If a Flock was pastured in another Parish, he allowed Herbage for them at 5 Groats per score, and then received full Tyth for Flocks pastured in the Parish of Baswich, and taken elsewhere, he claimed 5 Groats per score'. He also discussed Mr. Thomas Tooth's agreement which related to Mr. Willson's farms. 'In his [Mr. Tooth's] time, (as I have been credibly informed), there was a modus upon each of Mr. Willson's farms (afterwards occupied by John Lander and Richard Baddaley) of five groats which sums were frequently altered by Mr. Willson himself, and brought to an annual composition ..... alterable at will and pleasure. The said agreement was made between Mr. Willson and Mr. Tooth, and in 1735 altered by Mr. John Dearle by a new composition every year with Mr. Jn Licett and Mr. Tho. Gnosal, tenants to Mr. John Hodgetts; as appears by their own handwriting'. (50) It is interesting to

note that some parishioners paid their tithes in coals, hardly payment in agricultural kind, more a form of barter. Bill Jacob makes the point that such account books could prove invaluable to their successors to the benefice. (51) There can be no doubt that they were extremely important to their compilers, who could demonstrate who had, and who had not, paid their dues.

Causes involving the non-payment or 'subtraction' of tithes could be heard in the ecclesiastical courts. The courts had the power to determine the right to tithes, between clergymen, the clergy and their parishioners, and lay tithe owners and the parishioners. They could not make any judgement on moduses, which had to be heard in the civil courts. When tithe payments were demanded they could only compel payments deemed to be outstanding by the use of contumacy, excommunication, and finally a *significavit*. An important legal device, known as a prohibition, enabled the transfer of causes from an ecclesiastical to a civil court, where it was felt that the church courts were exceeding their jurisdiction. This could happen where it was necessary to determine temporal matters. As in other areas of court business it is likely that the church courts were used as a first step in the legal process, partly to trigger arbitration, though if a cause was sufficiently contentious, it could be taken on appeal to the Court of Arches in London.

Evans has pointed out the variety of methods of settling tithe disputes in the eighteenth century ranging from local arbitration, the intervention of a solicitor or a local JP, to the church courts, or the expensive and time-consuming major equity courts of the land in Chancery and the Exchequer. (52) The simplest option for the

reclamation of small sums of money outstanding for tithe dues, £2 or less, could be sought through the offices of the local Justice of the Peace from 1696. (53) With such a wide variety of potential sources to choose from, it is not easy to find a data source of any continuity or validity from which to examine tithe cases on a national scale.

The main concerns of the church courts relate to the reversal of moduses, the manner of tithing and a wide variety of background problems. Some disputes involved the collection of double and treble value of the tithes. The question of the disposal of the tithe crops and animals collected in kind could also create much ill feeling within a parish. Having gone to the trouble of collection at the correct time, the animals, particularly sheep, and the hay crop, were often sold back to the parishioners. One tithe cause arose because the incumbent elected to sell the tithe crop back to another member of the community for less than the grower would have paid. (54) The potential for disputes was immense in every parish and yet the number of disputes passing through the Lichfield courts was remarkably small.

ii) Easter Offerings

Burn defined Easter Offerings in 1797 as 'small customary sums paid by every person when he receives the sacrament of the Lord's supper at Easter', and set aside for the purchase of communion bread and wine. (55) The amounts due were very small. In some areas it was also customary to pay a small amount related to the size of the house. (56) Customs varied from parish to parish. Dissenting groups were particularly reluctant to pay Easter Offerings, and it can be

assumed that those who did not pay were, by definition, those who did not attend their parish church.

Easter Offerings are often linked to tithe payments but they were a very distinct and specific source of revenue for the church. They were technically known as oblations and obventions. (57) These payments were listed in the statute of 2 & 3 Edw 6. c.13, as being due at Christmas, Easter, Whitsuntide and the feast day of the saint of the parish church. These were compulsory payments, technically unrelated to agricultural production and, by canon law, strictly an offering to the church by the 'pious and faithful'. Technically, they could not be accepted from excommunicates, those who cut their sons out of their wills, were 'guilty of injustice, or had oppressed the poor'. The sums of money involved were very small, often 2d. from each adult communicant and the same for their wives, and children over the age of 16. The householder was also responsible for these payments for servants who resided with the family. With the passage of time, other small nominal payments for certain tithe elements were included in Easter Offering payments.

In 1749 a judgement in the Court of Exchequer decreed that these offerings were due of common right, at 2d per head for every individual over the age of 16. (58) This decision would have opened the way for these monies to be demanded through the civil courts.

Collection of these monies should have involved the clergy in contact with all of the faithful of their flock, for an annual reckoning at Easter, according to the rubric of the book of Common Prayer. Burn quotes the rubric at the end of the office of communion which states

that 'yearly at Easter, every parishioner shall reckon with the parson, vicar or curate, ... to pay to them, or him, all ecclesiastical duties, accustomably due'. (59)

At the beginning of the century, there is evidence that the money was occasionally collected by the cleric's relatives or the churchwardens. (60) Evidence has also been found of Easter Books/Offerings being occasionally rented out, as in the case of a parish in north Leicestershire. (61)

With the passage of time Easter payments often came to include modus payments for strappers (old milk cattle, kept for domestic milk), 'hearth' or 'smoke' pennies, in lieu of tithe on firewood, 'garden' pennies, in lieu of tithes on small amounts of fruit and vegetables. The collection of tithes on fuel and garden produce would have been almost impossible and these two payments represented a solution that was very much in the parishioners' favour. Other payments of the same kind have been found; hay pennies for instance, were paid in the parish of Glossop into the eighteenth century. (62)

John Dearle's tithe book includes a small Easter Book giving information about the Easter Roll and Dues from the chapelry of Acton Trussell in the parish of Baswich in Staffordshire. (63)

> Easter Roll for each house in Brocton is 3d. ob.
> Easter Roll for each house in Walton is 3d.
> For each colt 2d.
> For each cow 1d.
> For each hive 1d.

A strike of hemp 1s. 0d.

An acre of flax 5s. 0d.

A tithe goose 6d.

Burying a parishioner 6d.

Burying a foreigner 5s.

For a wedding 5s.

For asking thrice in the church 2s.6d.

The last four items are technically surplice fees. Records of payments of these offerings survive in very small numbers, often described as tithe rolls, or, more accurately, as Easter Books. Easter Offerings were due from all those who took communion in church, whether they were liable to pay tithes or not. (64) Although the amounts demanded were minimal, dissenting groups objected very strongly to these payments. Many clergymen kept their records assiduously, with notes and reminders jotted down. John Dearle's tithe book records one payment on Dec 7. 1745 of an account for Easter Dues settled from 1730 onwards at the rate of 1s.2d. per year until 1743, when they rose to 1s. 4d. The Easter books from Glossop also illustrate the degree of organisation in their collection. (65)

B Lichfield causes, numbers and settlement origins

Introduction - Overall tithe business, 1700-1829

As in other areas of their business, the church courts were used for very specific purposes. The fact that they could not enforce financial payment, or imprison those considered to be guilty, meant

that they were not used in circumstances where these punishments were required. Tithe causes did not form the largest part of the instance business of the Lichfield courts, possibly reflecting the the fact that the courts could not be used for debt collection. There were other agencies for that purpose, namely the equity courts and the ever increasing number of lawyers. A great many causes could have been taken before the local JP for summary claims of less than £2, for which no records survive.

Another technical problem obscuring the total number of tithe causes was the fact that there were large areas of peculiar jurisdiction, from which the tithes were claimed through other courts. (66) In Lichfield these were predominantly rural areas which would have reduced the amount of tithe business that could have passed through the consistory courts, certainly from Staffordshire. A few documents have survived in the form of citations, relating to ecclesiastical peculiars, particularly those of Dean and Chapter of the Cathedral. (67)

Finally, the diplomatic of the citations used at Lichfield in the eighteenth century used the phrase 'Ecclesiastical dues', rather specifically for tithes, levies or Easter Offerings and the status of the plaintiff has to be used to assess the type of cause. Vicars have been seen as pursuing small tithes and Easter Offerings and rectors claiming great tithes, although the latter could claim both. Once again, the occupation of the defendant is seldom given on the citation until the late eighteenth century.

The tithe business of the Lichfield courts in the eighteenth century was generally dominated by claims for small tithes, brought by

the clergy. The ecclesiastical courts were the most sensible place to hear such causes. Evans identified 559 causes from Staffordshire between 1700 and 1836. Of these, 58% were brought by the clergy. (68) The total number of causes in the three sample periods used in this thesis was 1029. (69) In three counties out of the four in the first and second samples, small tithes were dominant, resulting in between 40 and 50 causes per year.

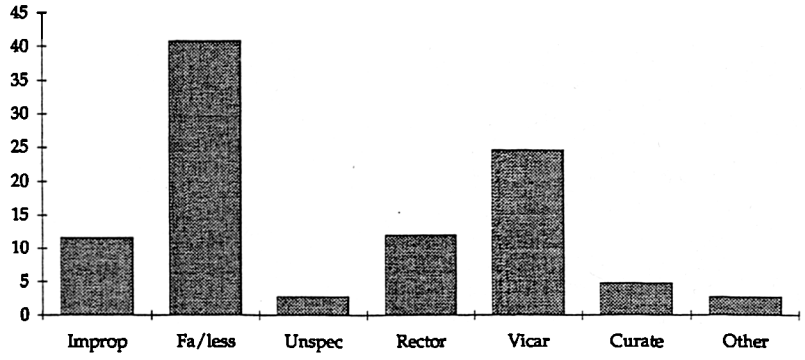

Fig. 4.1a Types of plaintiff in tithe disputes in the Lichfield diocese, by percentage of total number of causes, 1700-1719.

Improp = impropriator. Fa/less = farmer or lessee of tithes.

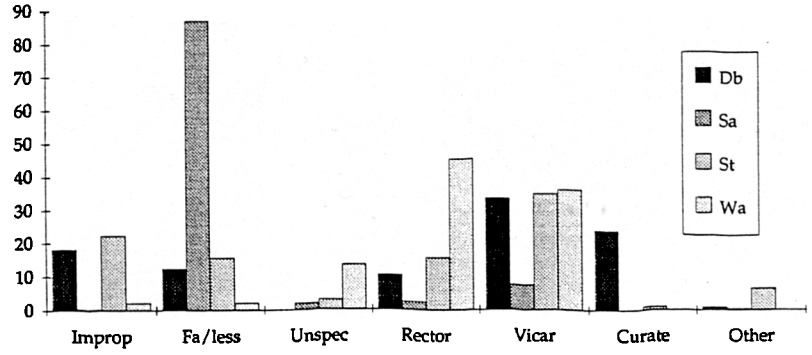

Fig. 4.1b Percentage of types of tithe plaintiff, by county, in the Lichfield Consistory court, 1700-1719.

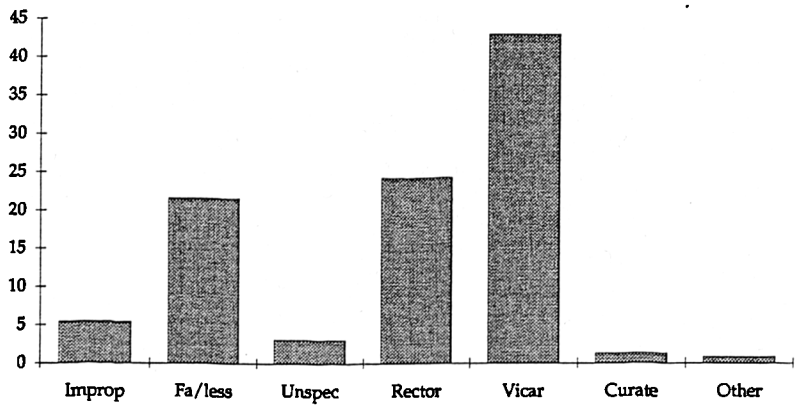

Fig. 4.2a Types of plaintiff in tithe disputes in the Lichfield diocese, by percentage of total number of causes, 1770-1789.

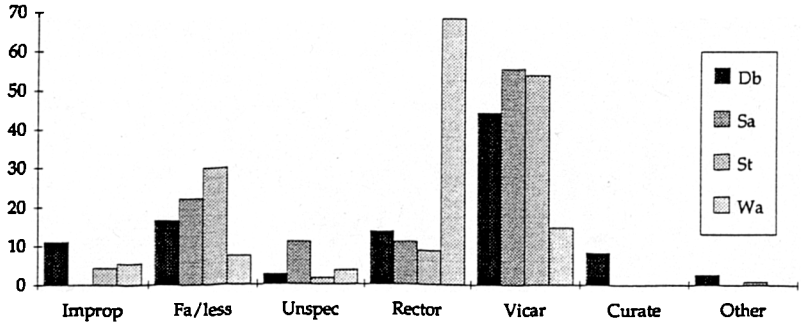

Fig. 4.2b Percentage of types of tithe plaintiff, by county, in the Lichfield Consistory court, 1770-1789.

Demands for great tithes from Warwickshire were strong in the first two samples, rising to 70% of causes between 1770-89. Claims from Staffordshire dominated the nineteenth century sample for both great and small tithes, by which time claims by curates and others had disappeared. The laity pursued tithe claims either as proprietors or as farmers of tithe/lessees, renting collection rights from either the clergy or proprietors.

The first sample period, 1700-19 saw 621 tithe causes, which formed 22.3% of the total court business over the period. This was distorted by an unusual cause in which 171 people were cited from Wem in Salop. By 1770-89 the number of tithe causes had fallen to 225, or 9.4% of the total number of causes, with 60 occupations of defendants given. (70) The number of tithe causes fell further to 153 between 1810-29, but formed a higher proportion, 19.2%, of the total business in these last two decades, probably reflecting the political agitation leading up to the Tithe Commutation Act of 1836.

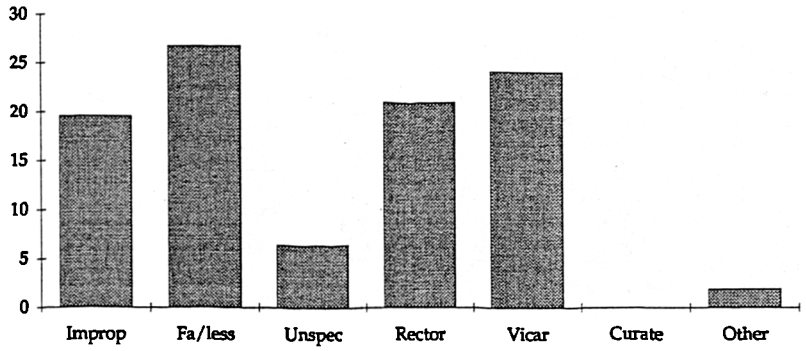

Fig. 4.3a Types of plaintiff in tithe disputes in the Lichfield diocese, by percentage of total number of causes, 1810-1829.

In the first period, claims were made by either proprietors or farmers of tithes/lessees in around 20% of parishes. Claims by this group rose to around 30% from Staffordshire by 1770-89. By the nineteenth century both the lay groups were demanding more tithes than the vicars, although not reaching the contemporary height of 50% achieved by the rectors of Shropshire at this time.

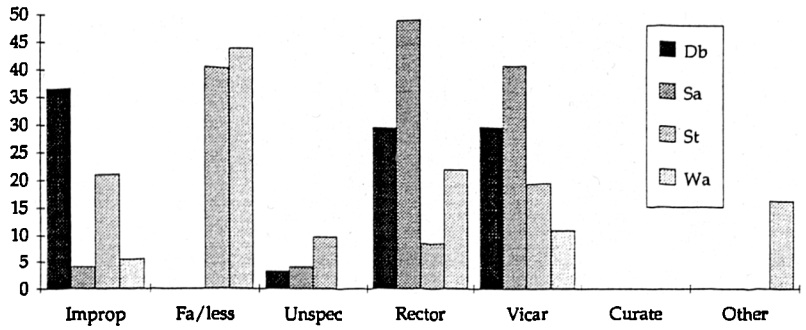

Fig. 4.3b Percentage of types of tithe plaintiff, by county, in the Lichfield Consistory court, 1810-1829.

The causes themselves fall into a number of categories. These include:

a) Single, isolated causes.

b) Groups of individuals from the same parish prosecuted in the same year, or within twelve months of each other. These causes usually produce almost identical sets of documents, and are suggestive of a new incumbent or farmer/lessee anxious to clarify their position, and reap the rewards of their investment.

c) Causes spread over a long period of time from the same parish, suggesting the presence of intractable problems of the definition of rights, either to a small area within the parish or the methods of payment by modus or composition.

The single, isolated causes seem to have produced citations only and have been resolved quickly. Evans has noted that very few people

were cited on more than one occasion in Staffordshire, and the same would appear to be true for the sample periods studied in more detail from across the diocese.

Evans asserts that one defendant was cited on each citation, but a considerable number of multiple, *quorum nomina* citations have been found at Lichfield, though the century. (71) Occasionally one or two of those initially cited would appear again the following year. It could be suspected that these causes were probably brought by a new incumbent or proprietor, establishing his rights. This form of citation presents its own problems, in that the return of the citation by an individual was necessary in order for a cause to continue. A number of citations indicate who has been contacted, in the usual form of affidavit signed by the apparitor. It could be assumed that those who could not be contacted would receive a further citation *viis et modis.* The use of such citations would suggest that they were simply being used to provoke some kind of response, preferably a financial one.

The large 'copycat' causes were often the result of a single tithe owner, often wealthy, using the same set of witnesses and almost duplicated libels pursuing a number of defendants within a single parish. This technique was used by Thomas Fanshawe in his pursuit of tithes in Dronfield in the 1740s, and by the officials of Derby Corporation when the new vicarage of St. Alkmund's was established in 1714. (72) Causes of this type were common in a single year, or over two or three at most.

The final type of cause, the extended form, was found in only ten parishes in the Lichfield diocese. Causes were taken from these

parishes to the church courts in all three sample periods. This would suggest the presence of an intractable problem of definition of rights. Of the ten parishes, only six had more than ten disputes overall in three periods between 1700 and 1829. The most contentious area in the diocese was of Birmingham, which was divided into two parishes. (73) fifty-seven causes came from the town, and of these 16 specified St Martin's parish. Charles Curtis was inducted to the rectory of St. Martin's in 1782, and twenty seven tithe causes were started the following year. Walsall generated 31 causes, and Abbots Bromley produced 26 causes. A further 22 came from Duffield and 21 from Wednesbury. In Prince and Kain's listing of the nineteenth century tithe files, the documentation from these parishes includes references to compositions, moduses and exemptions from tithes. (74)

Depositions by witnesses were common in the early modern period, when the rights to tithe collection were in question. They were not common in the eighteenth century tithe causes and few suggestions of personal animosity surface. The lack of depositions would imply that matters were settled out of court. The later causes were simply concerned as to whether the payments were due to the plaintiff. The church courts could not interfere with local customs, which were often recited in these causes. The officials of the courts received tithe payments, described as 'tenders', and passed them on to the respective plaintiffs. It was a discreet method of making a disputed payment, with the minimum of contact and potential conflict on both sides.

i) 1700-1719

Between 1700 and 1719, the numbers of parishes involved in causes varied widely between counties, with Staffordshire providing 52 in all, followed by Derbyshire with 31. Shropshire with 21, and Warwickshire, 17, were consistently lower, probably because the area of these two counties within the diocese was so much smaller. Tithe causes were unusual in that they tended to cite several individuals from a single parish, thus producing a large number of causes from relatively few parishes. (75)

The most spectacular cause from the Lichfield courts in this respect was brought in 1705 by Thomas Barnes, farmer of tithes of the parish of Wem in Shropshire, who cited 171 people to attend at Lichfield. A brief history of this parish between 1665 and 1716 given in Appendix 4.I, presents the background to the cause, and illustrates the extent to which the church courts reflect the problems of the wider community and their attempts to negotiate a solution. The evidence suggests a community well aware of the problems and costs of legal action through the civil courts, divided by Dissent as well as suffering debt and internal tensions. The efforts of Thomas Barnes to claim his tithes could be seen as a 'new broom' cause on a grand scale. He could also be seen as simply pursuing Dissenters. However, Thomas was a lessee of the tithes and wanted to make a profit on his lease of the right to collect them. His use of the church courts may well have been influenced by their comparatively inexpensive method of citation. He would not have wished to become involved in the protracted and expensive experience of a Chancery dispute to collect such an

enormous number of potentially small debts. Unfortunately, no records have yet been found to check up on the number of individuals who paid up. The massive cause did not progress far, and Thomas probably died in 1708. (76)

The litigiousness within the parish continued well into the century. In 1742 two citations were issued requesting another Mr. Thomas Barnes to appear before the courts to pay his fees to George Hand. (77)

The citations of this period tend to give the status of the defendant rather than their occupation. The defendants in the Lichfield courts between 1700 and 1719 included 34 widows, many in the Wem cause. Others included 5 executors/executrices, 2 armigers, 3 gentlemen, 5 tradesmen and a clerk.

Figures for the intermediate period have been given by Jacob for the Norwich Archdeaconry courts between 1755 and 1758. Figures from the Act Books suggest that they heard 2 tithe causes in 1755, 6 the following year, 8 in 1757 and 6 in 1758. Jacob suggests that there was a 'sharp increase in the number of tithe causes in the second quarter of the century', but gives no figures for the Consistory court. (78)

ii) 1770-1789

The occupations of defendants can be traced in 77% of the 225 tithe disputes in the 1770-89 period. (See Appendix 4.II) Among the 60 different occupations given were many tradesmen, including a gilder, plumber, staymaker, perfumer, watchmaker and eight others involved

in metal trades, in addition to the blacksmith who might have been expected as part of the rural landscape. Of the occupations given, only 26.6% belonged to the agricultural sector, described as farmers (16.4%) or yeomen (10.2%). This comparatively small number of defendants in the agricultural sector, less than might have been anticipated, may reflect one of the effects of enclosure, which was to reduce the number of farmers in each parish. The larger number of tradesmen may represent men with dual occupations, still required to produce hay, milk and milk products, eggs, fruit and vegetables for sale in the local town.

Comparative numbers of causes can be gleaned from the numbers of causes in the three courts of the Bath and Wells diocese given in a thesis by Polly Morris. (79)

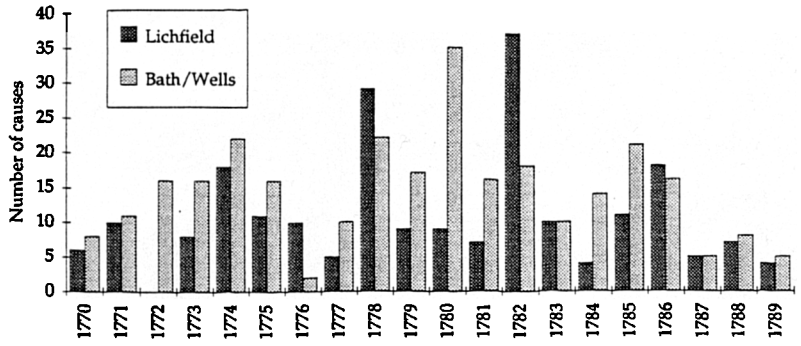

Fig. 4.4 Comparative numbers of tithe causes per year in the Bath and Wells and Lichfield courts, 1770-1789.

Between 1770 and 1789 these courts heard between one and 36 tithe causes a year, compared with between 4 and 37 causes at Lichfield. However, tithe causes formed a higher proportion of the overall business of the Bath and Wells courts. The overall number of tithe

causes heard at Lichfield was 218, compared with 288 at Bath and Wells. Both courts obviously remained very active during this period in this area of business.

iii) 1810-1829

The number of tithe causes dropped back to 153 during this period. Rectorial demands for tithe were comparatively few. The greatest number of causes, between 12 and 23 per year, occurred between 1818 and 1825, after which they fell away to less than 5 per year. Staffordshire provided the main areas of dispute, rising to 15 causes a year in 1821 and 1822. Derbyshire, Warwickshire and Shropshire causes only ever rose to four or five a year during this period. The agricultural depression following the Napoleonic wars increased the problems of the farming community. A Select Committee of Tithes reported in 1816, and suggested that leases of tithes should be granted for 14 year periods to their ecclesiastical owners, which would also be binding on their successors. This would have had the effect of reducing the tithe burden on the farming community when prices for produce fell. Ward suggests that tithes of produce became equal to the rent in monetary terms in the depression years. (80) This relative increase in tithe payment was seen by the farming community as intolerable reward for those who had contributed nothing to the production process.

The proportions of causes from each county in each sample period can be summarised as follows:

Year	Db	Sa	St	Wa
1700-19	18.8	37.6	35.5	7.9
1770-89	16.2	8.1	51.1	24.4
1810-29	19.6	15.6	52.9	11.7

Table 4.1. Percentage of tithe causes by county, passing through the Lichfield consistory court in each period.

The wide variation in the Shropshire percentages was the result of the Wem dispute in 1705. Staffordshire took half the business in the later part of the eighteenth and into the nineteenth centuries. Warwickshire causes also varied in number, possibly influenced by attempts by the Birmingham clergy to claim tithe monies from small productive farms on the boundaries of their expanding town.

In the first sample, 31 Derbyshire parishes were involved in tithe disputes in twenty years, 21 parishes in Shropshire, 52 in Staffordshire and 17 in Warwickshire. The comparatively small number of parishes involved in these disputes confirm the findings made in the early seventeenth century court in Leicester archdeaconry where such disputes were shown to be comparatively rare in most parishes. (81) By the latter part of the eighteenth century, 22 Derbyshire parishes were involved, seven from Shropshire, 25 from Staffordshire and thirteen from Warwickshire.

The nineteenth century disputes involved eleven parishes in Derbyshire, twelve in Shropshire, 21 in Staffordshire and only four in Warwickshire. In three counties out of four, the number of parishes involved in disputes dropped steeply and continuously. Shropshire proved the exception, with the number of parishes involved in disputes doubling between 1770-89 and the 1810-29 sample. Shropshire was a county of old enclosures, where the tithe question had probably been resolved many years previously. The spatial area of the county in the diocese was also comparatively small when compared with the entire counties of Derby and Stafford.

C Case studies from Lichfield

a) Joseph Delves, clerk, Vicar of Abbots Bromley c Henry Holland, butcher. (82)

This cause illustrates the complexities of tithe collection and the problems of maintaining good relations with parishioners in one of the most contentious parishes in the diocese. Both parties had different perceptions of the customs of the parish and Holland's concept of credit was typically elastic for the period. It also illustrates the depth of detail involved in these disputes, even down to the numbers of each type of tree in a garden. One of the problems with the tithing of hemp and flax was that of processing. Both plants were pulled, retted, and hackled, prior to spinning, and the problem here was to determine the point at which the crop would have been tithed. The question of renting property and gardens for short periods and their liability for tithes has yet to be considered. Holland's questioning

of the 'ancient houses' paying their tithes in kind would imply a differential structure in the tithe system in this parish.

Henry Holland, a butcher from Abbots Bromley was taken to the consistory court by the Rev. Joseph Delves, clerk, vicar in 1779. The libel related to tithes due between 1773 and 1779 and included the following items and claims:

i) The fruit of apple, pear, plum and cherry trees, together with gooseberry and currant trees.

ii) Peas, beans, potatoes, carrots, turnips, onions, parsley, cabbage and divers other herbs, roots and plants.

iii) The value of these crops in each of the years in question amounted to twenty shillings, and the tithe thereof was worth two shillings.

iv) He also sowed a rood of land with hemp and another rood with flax. [83]

v) The hemp from each rood of land was worth 1s.3d. and the flax was also worth 1s.3d.

vi) Every resident of the parish of Abbots Bromley had to pay annually one penny each for himself, his wife, his children over the age of sixteen, as an offering.

vii) Every resident of the parish who used any 'Trade, Science or calling' in the name of a personal Tithe, should pay to the incumbent 4d.

viii) Every resident who kept a serving man or maid should pay to the vicar a rate of one penny in the pound the wages paid to each servant as a personal tithe.

ix) Henry had been asked at least once for these dues and has refused to pay them.

Most of these articles are typical of the period, covering small tithes, Easter Offerings and, unusually, personal tithes for both householder and on servants' wages. Articles i)-iii) relate to small tithes, most of which would normally have been covered by the modus for a 'garden penny', which may not have been included in the offerings for this parish. The tithes demanded in articles iv) flax and v) hemp reflect small quantities of comparatively valuable crops. The offering demands vi) were for a penny per person, which was very low, most parishes by the end of the century demanding 2d. or more per communicant, which would have yielded only about 3s. overall. The rate of 1d. in the pound for servants viii) was also low. As a butcher, Holland should also have paid personal tithes, if they were the custom of the parish. He also had several children over the age of sixteen.

The overall demand here would have amounted, over the seven year period, to around 14s for garden produce, with another £1.5s. for hemp and flax tithes. Personal tithes would amount to 2s.4d, with another 3s. or so for Easter Offerings. The amount requested for servants was not stated. The total demanded would have been an estimated £1.6s. for the seven year period.

Holland's personal answers were contentious. He denied that the clergy ever received fruit and vegetable tithes in kind in the parish, from the ancient gardens belonging to the 'several antient Houses or Messuages situate within the said Town'. He denied living in the parish in 1772, (which was not in the libel), but agreed that he had

rented a house and garden from James Evans, now deceased, between 1773 and 1775. The garden belonging to the house contained about 2 roods of land. At the end of 1775 he moved into another rented house, which belonged to Thomas Hawthorn, which he continued to rent from 1776 until 1779, and where he still lived. The garden to this property contained about six roods of land. He claimed that every resident of the ancient houses paid a penny for smoke and one penny for their gardens, annually to the vicar at Easter, in lieu of the tithes on firewood and garden produce respectively. He admitted that there was one plum tree and one gooseberry tree in James Evans' garden. The second garden contained one apple, two plum trees, with several sorts of gooseberry and currant trees. He also agreed that he had planted the garden with vegetables in the years in question. The value of the crops from the first garden was only 2s. per year, and 10s. per year in the second garden. The tithe due from the first garden would have been worth $2^1/_2$d per year, and that from the second 12d. yearly. He denied sowing hemp or flax in his garden, or anywhere else in the parish in the years mentioned. Henry also denied that any of his children were still living at home during the period in question, 'they being out as Servants or Apprentices at a distance'. He claimed to have paid Delves the sum of one penny each for himself and his wife when requested, including the sum of four pence annually for his trade. He also denied employing any servants during the period in question. Holland finally claimed that he had paid all the dues that had been asked of him, 'According to the customs of the said Parish', and refused to pay tithes in kind on fruit and vegetables, except the smoke and garden pennies. Holland was literate with a bold, but fairly simple, signature. His reply shows the immense detail and complexity involved in settling even small sums, and the potential for confusion and disputes.

b) Henry Bromwich, Vicar of Worfield, and his parishioners.

Following the negotiations for tithes quoted earlier, (84) further problems continued in Worfield parish. In 1786, Henry Bromwich, then Vicar of the parish took five of his parishioners to court in 1786. William Baker and Edward Pratt, both yeomen, were cited on 23 Jan of that year, along with Ann Payne, widow. Richard Allenton, a local butcher, and Mary Rowley spinster, were cited on 10 November. (85)

This cause suggests a seriously deteriorating state of relations between clerk and parish. Edward Pratt, on the 10 October 'out of an intent to avoid suit and prevent an unjust vexation and charges to the tithes' tendered the sum of 5s.4d. to the court. But he was not one to take matters lying down. Ten days later he swore a statement at Wolverhampton in front of an attorney, William Chrees, which ran as follows:

> Edward Pratt of the parish of Worfield in Salop, farmer, maketh oath that payment for tithes of hemp grown by him in 1785 was never demanded or asked for by Henry Bromwich, Clerk, plaintiff, nor had he any notice to pay previous to service of the citation in January 1786. Such payment for Hemp and Flax was received and accepted by Henry Bromwich at or after Easter when Edward Pratt paid an annual composition for Easter Dues and all small tithes.

Rev. Bromwich then made a sworn statement at Wolverhampton, in front of a civil attorney as follows:

In Chancery Bromwich agt Pratt
Bromwich agt Payne

Henry Bromwich clerk Vicar of Worfield in the County of Salop makes oath that it is usual for parishioners of Worfield to pay or cause to be paid to the Vicar of Worfield for the time being, the tithe of their Hemp and Flax as soon as it is cut, pulled or carried off the ground: and that he himself during all the time of his being Vicar has either actually received, as he now continues to receive from his respective parishioners sowing, growing and gathering Hemp and Flax in the said parish of Worfield his tithe of such Hemp and Flax after the rate directed by Act of Parliament before or very soon after the same was or is carried off the ground whereon it grew. And this Deponent further saith that a General Notice for all the parishioners in and of the said parish of Worfield to pay other small tithes due to the Vicar and all arrears thereof was publicly read or given in the time of Divine Service in the parish church of Worfield by the parish clerk before the commencement of the two several suits by him this Deponent in the Lord Bishop's Consistory Court against the said Defendants, Edward Pratt and Ann Payne for small tithes respectively.

Sworn at Wolverhampton 1st Nov 1786: Signed by
Before Hen: Smith Henry Bromwich
Master Extraordinary in Chancery Vicar of Worfield.

The fact that these parishioners had obtained receipts for their tithes for several years prior to the cause coming before the courts would suggest that they were well aware of the need for written records. Ann Payne's receipts extended from 1777 to 1785 and were neatly sewn to her sworn affidavit. (86) This evidence from the cause would suggest that the parishioners of Worfield were fully aware of their Vicar's problems and were taking defensive action. It is also interesting to note the use of the civil attorney alongside the church courts.

c) Easter Offerings, William Pashley, clerk, Rector of Barlborough, Derbys. c George Chambers.

George Chambers was one of four parishioners Pashley took to court in 1781 for non-payment of Easter Offerings. (87) George was possibly an anomaly in eighteenth century society, and hence subject to neighbourly criticism, in that he was a bachelor who had opted to live with his mother in her 'superannuated' years, probably in the hope of inheriting the house and other property as a 'sitting tenant'. His personal responses to a pretended allegation dated 22 March 1781 included the fact that between 1770 and 1777 he had been an assistant to his mother, Catherine, being her natural and lawful son. He had lived and resided with her in Barlborough between 1775 and 1777, not in the adjoining tenement. In spite of keeping a maidservant he was not a 'housekeeper or a master of a family'. His mother was 'liveing old and infirm', and she too kept a maidservant, 'for the use of the family for dressing Victuals and looking after the house or Tenement, so held or occupied by this Respondent's mother', who paid the servant's wages.

George made a 'door place' from the parlour into the garden, to make sure his mother was not disturbed after she had gone to bed. She slept in the house place, and frequently retired to bed at about 4 or 5pm. Fires were kept in both the parlour and house place or kitchen, but George denied that they had boiled separate pots and answered that 'he hath for the most part eat his victuals with his said mother and the said servant maid, in such parlour or place but not at this respondent's table'.

George had, with a group of three other men, fenced in part of the waste of the parish and grown potatoes on the ground, and his statement included the assurance that 'no further manurance was made'. Part of this Intake he sowed with potatoes and the rest with corn or pulse.

The historical agenda in this narrative is interesting. The motive in bringing this particular cause was once again, to publicly explain a situation, and to quash potential rumours. The situation had not been resolved in the three years before matters were brought to the court. The case against George seems to hinge on the parties 'drawing different smoaks and boil[ing] separate pots', and the use to which the potatoes were put. The amount of money in question was obviously very small, but could have set a precedent in the parish, and the right to collect the monies would have been lost.

Easter Offerings were paid by the householder, hence the need in this cause to emphasise the fact that they ate together, although separate fires were kept - George denied 'boiling separate pots'. In

other words, keeping separate households. Not only was the cooking of food important, but the place of eating it too. Elderly relatives often lived as boarders or 'tabled' within the households of the younger generation of the family. It was important to emphasise that both parties ate at the old lady's table, otherwise the son would have been deemed head of a household. (88) A similar situation applies to the growing of potatoes on the waste. If manure had been applied, the ground could be said to have been improved and may have been tithe free for seven years. However, by not manuring the ground George and his friends were simply growing a domestic crop, for their own use, rather than for sale. This would only have been subject to tithe as garden produce.

d) John Dearle c Mr. Gnossal, 1743 Tithe destroyed

A rare account of the background to a tithe dispute can be found in John Dearle's tithe book. (89) It was obviously a cause that was important to Rev. Dearle. The evidence here would suggest that the citation was sufficient to indicate that the plaintiff meant business. It also illustrates the route by which a cause could skirt around the courts without leaving any documentation. It is, of course, impossible to estimate how many other causes of this type have not left any documentation in the courts. John Dearle's description runs as follows:

> On Thursday June the 16 Mr Gnosall at his own House gave me notice that I should take his tyth hay and clover etc in kind. June 20: Marsh and Marsh Meadow were tyth'd. June the 27 the tyth of Stone Bingham being closed was gather'd in kind. June

the 24 Gnosall (having carried his own hay out of Marsh and Marsh Meadow) turn'd his cattle in whereby the tyth was damag'd and spoiled. After this the gate was lock'd and chain'd and the tything man stopped from carrying it in the morning June ye 25. In the evening of the same day his servant turn'd in 18 cows and a bull, lock'd the gate, and said was done by her master's order. Mr. Hickings offer'd a guinea for satisfaction for the damage, which I refus'd. Afterwards Gnossal said he would not give 10s; I demanded 2 Guineas. I committed the cause to the management of Mr. Char Howard in Lichfield Court who cited Gnossal twice by Morgan the apparitor, who could not find him, and there was no appearance given in October the 4 and 18. So there could be no proceedings till the citation was servd personally. October the 18 Gnossal did not appear at Lichfield, but a Proctor then in the court said, he would not appear for him, because he would give me as much trouble as possible.

Witnesses for proving that Gnossal himself and his servant by his Order spoil'd my tyth hay in Marsh and Marsh Meadow.

June the 20: it was set forth by himself to me in Cocks *wit[nesses] Seth Stanton, Rich Wooton, Eliz Withnal.*
June the 23: he told me I might carry it by the gate leading to the road. June the 24: He carry'd his own hay and then he himself and his man Tho Gilbert turned 18 cattle into the Marsh, where they spoil'd the tyth *Wit[nesses] Tho and Anne Vicas.*
June the 25: Tho Moss and Char Clowes with a team were stopp'd at the gate, which was lock'd, chain'd and cotter'd *Wit[nesses] Rich Wooton,Tho Moss Char Clowes.*

June the 25 Eliz Etherington servant to Gnossal turned the 18 cattle and a bull in the Marsh, then lock'd and chain'd the gate, and said she was order'd to do so *Wit[nesses] Anne Dearle, Anne Vicas.*

The said Eliz Etherington told me, that she was ready to attest upon oath, that she was sent by her Master Gnossal and order'd to lock the Gate, while the cows were milked and then to turn them in again and lock and chain it. She also declar'd that she would swear Gnossal ordered his servants to shut up his cattle in the fold till he had carry'd his hay, and then to drive them up on my tyth. *Wit[ness] Eliz Etherington.*

1743 July 9. Gnossal declared at George Fenton's that the reason of his acting thus by me in spoiling my tyth was because I had sold to another for less than he offered for it. *Witness Mr Will Corne.*

In Nov I libelled him again in Lichfield court upon the statute of Edw. 6. Nov the 27: Mr. Benj. Parr his son in law put a stop to all proceedings by paying to me 50s and to Mr. Howard my Proctor costs and expenses of suit. Mar the 21 1743 Mr. Howard pay'd the 50s damages received from Gnossal.

No papers survive from this dispute, indeed there are not likely to be any. Gnossal was cited to appear but never did. Proceedings could not begin until the citation had been returned, and the cause was stopped by the intervention of Mr. Gnossal's son in law. The phrase, 'I libelled him again' may imply that a citation was being sought again. This may have been the fate of many other cases which hovered on the brink of the courts, but have left no trace.

Summary

It will be many years before a complete picture can be built up of the number of tithe disputes heard before the available range of courts. One starting point is the work of the ecclesiastical courts. The fact that the church courts could hear instance claims for unpaid tithes reflects their medieval origins, although by the eighteenth century the civil courts tended to be used for the collection of tithes for three reasons. These disputes were about money and debt. First, the goods received as tithes were a lay chattel immediately after separation from the main crop. Second, canon law itself could not enforce payment - its function was to correct manners and reform souls, not enforce the payment of debts. Spiritual discipline originally demanded these payments, and once this had ceased to be important, so did the payment of tithes. Finally, there was no means of updating canon law except through the synod, a long and complex process.

In view of these facts, why did people still use them to resolve tithe disputes? The main advantage of the church courts was that they could be used as a convenient and inexpensive starting point. The courts sat fortnightly and the proctors were available for consultation between court days. The Registry was well organised, and would search for documents by postal request. If the initial citation did not encourage payment the cause could be transferred by prohibition to the civil courts, where the legal proceedings could continue. The court officials would accept tenders for tithes, acting as a third party and avoiding any contentious contact between the parties.

Church courts were generally used where arbitration was likely to succeed, or to provoke a positive response, without the expense of further action in the civil courts. Very few causes ever reached sentence, and they have not yet been quantified, although Evans comented on the small number of sentences in the Lichfield courts. (90) The more subtle element of public correction of a potentially animous action was still morally important, as in so many other areas of the court business.

More obliquely, to hear cases relating to the withholding of 'God's share' of the harvest was more apposite in an ecclesiastical setting. This factor was also relevant to the treatment of Dissenters. Jacob suggests that there was a link between dissenting groups and tithe disputes, although the number of examples quoted is very small. (91) But the evidence from Quaker records suggests that their dues were generally collected through the civil courts, to avoid theological acrimony. A letter to Joseph Rann, vicar of Coventry, who pursued a group of Quakers for payment of their Easter Offerings between 1780 and 1789 illustrates the attitude of the higher church courts:

> Is it consistent with your usual humanity and charity to persist in such a demand against those People at a time when you know that from their Principles (however well or ill founded) they cannot conscientiously and therefore will not submit to the demand but will rather suffer themselves to be the Victims of the Laws utmost extremity and it is well worth Your consideration what the extremity of the Law is in questions of this nature.

The letter was written by Robert Jenner, from Doctors Commons dated 28th August 1782. (92) The evidence from Quaker records would suggest that around 60% of the tithe causes brought against their number were brought by impropriators. Finally, the examination of clerical account books shows that tithe collection was a far more complex operation than has been realised, requiring the cooperation of other landowners to give access to the tithe of crops collected in kind, the need for assistance and equipment. The treatment of the Quakers by the clergy was typically pragmatic. There were a great many Dissenters in the diocese by 1800, but very few indeed were openly pursued through the church courts. The local JP would distrain goods quickly and simply from those who objected to the payment of tithes and Easter Offerings on the grounds of conscience.

Jacob sees the maintenance of records as being to the advantage of the incumbent's successors, but their value to the incumbent himself would have been infinitely more important. The variability of tithe payments within a single parish was extensive, some farmers negotiating their own composition, others paying in kind, and records of payment would have been vital to avoid disputes. The case studies have shown that, in this area of business too, there were often other disputes in the background, and that the function of the courts was much wider than merely upholding rights to the collection of tithes. (93) Evans comments on the paucity of sentences in these causes, and suggests that this may be the result of document loss; however, the letter books of the Lichfield register, John Mott, suggest that the mere threat of legal action would often be enough to goad defaulters into action to resolve the situation. (94) The experience of many Lichfield registers was summed up in that observation. These courts handled

large numbers of causes in the eighteenth century, certainly many more than the Norwich consistory. In the area of tithe disputes, the courts of the predominantly agricultural diocese of Bath and Wells heard more than that of Lichfield. An unknown, but probably very small, number went to sentence, the remainder either passed to the civil courts or were settled quickly and quietly out of court.

The main body of church court records from Lichfield would suggest that very few causes were brought against Dissenters. The courts were pragmatic and only undertook what they knew could be done.

Finally, the examination of clerical account books has shown that tithe collection was a far more complex operation than has been realised, requiring a very deep local knowledge of people, their landholdings and rented property, their family backgrounds and history, and the types of crops grown and animals kept by each family. The rare survivals of clerical accounts and notebooks can provide a fascinating insight into what W.E. Hoskins described rather unfairly as, 'an arid field of enquiry'. (95)

References:

1. R. Lonsdale, ed., Eighteenth century verse (Oxford, 1984), p. 298.
2. Henry Taylor (1711-1785), was instituted rector of Wheatfield, Oxon, 1737, after spending a year as curate of Rivenhall, Essex. He was also a poet and writer of epigrams. Dictionary of National Biography XIX, p.409. He recognised the problems of

the poverty of the lesser clergy, and its ensuing effects on their marital relationships. The poem was published in the Gentleman's Magazine (1736).

3. Whilst there is evidence for the comparative fairness of the tithing system with livestock, that of the grain crop was established on a random basis. The tenth sheaf of grain, cock of legumes or windrow, windlath, or cock of hay, was simply marked and set aside.

4. W.G. Hoskins, The Midland Peasant (1965), p.134.

5. A capitulary was a regulatory directive. The Capitulary of Herstal was issued by Louis the Pious, successor to Charlemagne following his reform of the ecclesiastical courts in northern Europe. J.A. Brundage, Medieval Canon Law (1995), p.28.

6. E. Le Roy Ladurie, and J. Goy, Tithe and Agrarian History from the Fourteenth to the Nineteenth Centuries (Cambridge, 1982), pp.14-15.

7. E.J. Evans, The Contentious Tithe (1976), p.17.

8. All parts of the field system were accessible. The crops would ripen more or less simultaneously, and collection of the tithe would have been comparatively simple.

9. P. Morris, 'Defamation and sexual reputation in Somerset, 1733-1850', (Ph.D. thesis, University of Warwick, 1985).

10. D.M. Barratt, 'The condition of the parish clergy between the Reformation and 1660, with special reference to the Dioceses of Oxford, Worcester and Gloucester', (D.Phil. thesis, University of Oxford, 1949); D.M. Gransby, 'Tithe Disputes in the diocese of York, 1540-1639', (M.Phil. dissertation, University of York, 1966);

A. Tarver, 'Tithe disputes in the archdeaconry courts of Leicester, 1560-1640', (MA dissertation, University of Nottingham, 1989).

11. E.J. Evans, 'Tithe disputes with particular reference to Staffordshire', (Ph.D. thesis, University of Warwick, 1970); E.J. Evans, 'Tithing Customs and Disputes: the Evidence of Glebe Terriers, 1698-1850', Agricultural History Review 18, (1970).
12. W.R. Ward, The tithe question in England in the early nineteenth century, Journal of Ecclesiastical History 16 (1965).
13. W.M. Jacob, 'Clergy and Society in Norfolk, 1707-1806', (Ph.D. thesis University of Exeter, 1982).
14. Morris, 'Defamation and sexual reputation', p.360.
15. M.E. Turner, English Parliamentary Enclosure; its historical geography and economic history (Folkestone, 1980); Roger J.P. Kain and Hugh C. Prince, The Tithe Surveys of England and Wales (Cambridge, 1985); G.E. Mingay, Land and Society in England, 1750-1980 (1994), Chapter 4.
16. Evans, 'Tithing Customs'.
17. Small tithes were due from the multiplication of livestock and provided a large proportion of vicarial income, particularly from lambs, pigs and birds (especially geese in Staffordshire).
18. E.J. Evans, 'Some reasons for the growth of English rural Anti-Clericalism, c.1750-c.1850', Past and Present 66 (1975).
19. Glebe land was land donated to the church for the use of the incumbent, to provide an income from farming the land in hand or renting it out.
20. Sequestration was the process of the collection and retention of the income of a vacant benefice, awaiting the appointment of the next incumbent.

21. LJRO, B/C/5/1700:Tithes:Uttoxeter:Dorothy Howe c various defendants.

22. Hereafter referred to as farmers/lessees of tithes to differentiate them from farmers as producers.

23. A total of 8 lessees were involved in a Walsall cause in 1700, suggesting that the profits were sufficient to divide amongst so many.

24. WSL, 93-97/31, The Leigh Tithe Book, and S.MS 429/iii, The Baswich Vicarial Account Book, are rare survivals of this type of document.

25. WSL, 93-97/31, The Leigh Tithe Book. Paper inserted into the account book, and entitled 'An Account of Lambs, Wooll, Geese and Pigs at Leigh in 1745'. One person paid 2 geese out of 17 birds in his possession.

26. Burn, Ecclesiastical Law (1797) III, p.413, 12 & 13 Edw.

27. Ward, Tithe question, p.70.

28. Ward, Tithe question, p.72.

29. Ward, Tithe question, p.70. This is questioned by Evans, Contentious tithe, p. 111, who gives the number of Acts as nearly 3700, of which only 60% commuted tithes.

30. Victoria County History of Shropshire IV, Agriculture (Oxford, 1989), p.171.

31. VCH Salop, IV, p.172.

32. WSL, S.MS 429/iii. John Dearle's Tithe Book.

33. A. Tarver, 'Barrow upon Soar: some aspects of the social and economic structure of a late sixteenth century village', East Midland Historian 4 (1994), pp.20-27.

34. Evans, 'Tithe disputes', p.104.

35. Evans, Contentious Tithe, p.44.

36. Census, 1801.

37. Evans quotes 91 Staffordshire parishes in Tithe disputes, p.95. This sample included all Staffs causes, including those from the Dean and Chapter court. The present 60 year sample involved a total of 68 parishes from Staffordshire.

38. WSL, pBOX/L/2/13/6/1, Bishop Smallbroke's Charge to the Clergy.

39. LCRO 1D41/4/XX,40. This Leicester archdeaconry court cause paper contains an outstanding listing of all these dues and their collection at Easter, Martlemas and Lammas, when the tithes of the parish of Fleckney were listed as part of a long dispute over agistment by 23 older men of the village, the eldest of whom was 87.

40. Windlath - a row of cut hay dried in the wind.

41. Dorothy Howe pursed several individuals from neighbouring parishes for tithes in Uttoxeter at the turn of the eighteenth century.

42. WSL, S.MS 429/iii. John Dearle's Tithe Book.

43. WSL, 93-97/31, Leigh Tithe Book, 1744-47.

44. Grant from the Dean and Chapter of Lichfield.

45. SaRO, 1374/17.

46. Agistment tithe was the tithe paid on cattle or other produce of grass lands, paid to the vicar or rector by the occupier of the land, and not by the person who may put his cattle there to graze at a certain rate per head.

47. This echoed the old principle that the great tithes were due from crops that could be sold, whereas garden crops were considered as subject to small tithes, often covered by the garden penny.

48. To take in or to graze for payment, price paid for cattle grazing on the land.

49. The second crop of grass that grew after the hay was cut, not only in the meadows but upon the old medieval headlands.

50. WSL, SMS 429/iii. John Dearle's Tithe Book, f.32v.

51. Jacob, 'Clergy and Society', p.121.

52. Evans, Contentious Tithe.

53. £10 from Quakers.

54. Gnossal dispute described on p.212.

55. Burn, Ecclesiastical Law III, p.21.

56. Tarver, 'Barrow on Soar', p.23.

57. Burn, Ecclesiastical Law III, p.21: Burn states that the term oblation is defined in canon law as any kind of offering made to the church voluntarily, by the 'pious and faithful'.

58. Burn, Ecclesiastical Law III, p.22, quotes the case of Carthew and Edwards.

59. Book of Common Prayer And Administration of the Sacraments And other Rites and Ceremonies of the Church, According to the Use of the Church of England, Together with the Psalter or Psalms of David (1728), p.44.

60. DeRO, D3705/23/16-20, Glossop Easter books.

61. Tarver, 'Barrow on Soar'.

62. DeRO, D3705/23/19.

63. WSL, S.MS 429/iii. John Dearle's Tithe Book.

64. These were nominally due at Easter, although the Leicestershire evidence would suggest that they were paid quarterly in some parishes. If so, the income from this source would be larger than appears.

65. DeRO, D3705/23.

66. Any parish that was not subject to the visitation of the ordinary of the diocese in which it was nominally situated is known as a peculiar jurisdiction.

67. Included by Evans as ecclesiastical causes.

68. Evans, Contentious tithe, p.3. The number of disputes had declined considerably before 1800.

69. Eric Evans, Contentious Tithe, located 559 causes in the consistory court between 1700 and 1836, 'where it has been possible to distinguish the protagonists with certainty', p.43. Evans does not state his definition of a cause, or whether he has simply counted the cause papers or used the Court Books. In this work, the type of cause often gives an indication of the status of the plaintiff.

70. See Appendix 4.II.

71. Evans, 'Tithe disputes', p.95, but only for tithe disputes.

72. LJRO, B/C/5/1740s:Tithes:Dronfield:Thomas Fanshaw c several parties. LJRO, B/C/5/1714:Tithes:Derby, St. Alkmund.

73. St. Martin's and St. Peter's were the two major parishes within Birmingham.

74. H. Prince, and R.J.P. Kain, The tithe surveys of England Wales (Cambridge, 1985). Particularly from Abbots Bromley and Walsall.

75. Evans, 'Tithe disputes', p.95, found that 'individual citations were generally issued to separate defendants in the ecclesiastical courts'.

76. SRO, Parish Registers, Wem.

77. LJRO, B/C/5/1742/Non-payment of fees, stipend and salary: Wem.

78. Jacob, 'Clergy and Society', p.128. Another reference to these figures on p.271 puts the figures for tithe causes as 1755 - 2; 1756 - 2; 1757 - 9; 1758 - 6.

79. Morris, 'Defamation and sexual reputation', Fig. IIIA following p.133.

80. Ward, Tithe question, p.78.

81. Tarver, 'Tithe disputes'.

82. LJRO, B/C/5/1779/Tithes:Abbots Bromley:Delves c Holland.

83. A rood was a quarter of an acre.

84. SaRO, 1374/17, and pp.11-12.

85. LJRO, B/C/5/1786/Tithes:Worfield:Henry Bromwich, Vicar, c five parishioners.

86. The payments ranged from 1s.11d. in 1777 to 13s.10^{1}/2d. in 1782, falling to 6s.4^{1}/2d. in 1785. These figures would suggest an incumbent seeking to increase the value of his living; such an increase must have been financially devastating to Ann. What this must have done to her faith in the church, and its ministers, can only be the subject of speculation.

87. LJRO, B/C/5/1781/Easter Offerings:Barlborough:William Pashley, Rector c George Chambers, Richard Allenton, butcher, Mary Rowley, spinster, Edward Pratt, yeoman.

88. This type of problem would have been insoluble for the clergy in urban areas, particularly where lodging houses were densely populated.

89. WSL, S.MS 429/iii. John Dearle's Tithe Book.

90. Evans, Contentious Tithe p.51.

91. Jacob, 'Clergy and Society', p.133.

92. Robert Jenner may have been the son of Robert Jenner who died in 1767. The family continued as lawyers at Doctors

Commons well into the nineteenth century. G.D. Squibb, Doctors Commons (Oxford, 1977), pp.117, 191.

93. Evans' work on the history of tithes in Staffordshire has also confirmed the fact that other forms of personal conflict were involved in many causes. Evans, 'Tithe disputes', p.101.

94. Evans, 'Tithe disputes', p.111. John Mott was the Register of the Lichfield Court in the 1830s.

95. Hoskins, The Midland Peasant, p.134.

CHAPTER FIVE : MATRIMONIAL BUSINESS

Likewise the wedding (and cohabitacion of the parties) ought to begone with god, and the ernest prayer of the whole church or congregation ... Into this dishe hath the devill put his foote and mingled it with many wicked uses and customs...

Miles Coverdale, 1541. (1)

Wife and servant are the same,
But only differ in the name:
For when that fatal knot is tied,
Which nothing, nothing can divide,
When she the word Obey has said,
And man by law supreme has made,
Then all that's kind is laid aside,
And nothing left but state and pride.

Lady Mary Chudleigh, 'To the Ladies', 1703. (2)

Introduction

The two quotations serve to illustrate the two facets of matrimonial business of the church courts. Coverdale hints at the problems of the making of a marriage at the time of the Reformation, and the need for a public, witnessed ceremony. Many marriages were made by private, unwitnessed contract, but the bond was technically indissoluble. Mary Chudleigh demonstrates the problems of breaking that bond, with its legal and financial obligations.

The matrimonial business of the church courts was concerned with both the formation and breakdown of marriage. Formation causes could be heard both as office and instance business, the former both in summary and plenary form. Separation was a matter between individuals, over which the church courts maintained their jurisdiction from the twelfth century down to 1857 when this was vested in the newly established Divorce Court. (3)

Three legal elements were necessary for marriage formation from the medieval period down to the late sixteenth century. First, both parties must be free, in that neither party had exchanged a contract with another, or was already married to someone else. Second, the parties were not to be closely related to each other, (4) or under the legal age for marriage - fourteen in the case of a boy and twelve in the case of a girl. The final and most important factor was that, within these requirements, consent was to be freely given by both parties. Technically canon law required that the couple should announce their intentions and exchange their consent publicly in the present tense, witnessed by a priest who would bless the couple afterwards. This would create few problems, should it ever become necessary to prove that the marriage had taken place, for example, where a will was contested. However, an agreement to marry, freely and privately exchanged between the couple, un-witnessed, and followed by intercourse also constituted a legally binding marriage. It was often simpler for a couple to exchange a contract and consummate the marriage unwitnessed, especially if their families and friends were opposed to the match. Couples sometimes preferred simply to exchange an unwitnessed contract and consummate the marriage, with the minimum amount of fuss. Though legal proof of these events

would be difficult to obtain, this type of marriage was perfectly legal until 1753. If problems arose between the couple, it was just as indissoluble a bond as the more formal ceremony.

By the beginning of the eighteenth century, the concerns of the church courts were beginning to shift from the complexities of making a marriage to the problems of marital tension and breakdown. The work of the Lichfield courts shows that both sexes suffered from the rigidity of ecclesiastical and social expectations and *mores* regarding sex and marriage. Whilst matrimonial causes in some dioceses have been examined from the point of view of upper class separation, (5) and gender-based studies, there is also a need to consider them individually and in their social context. (6) The evidence from the Lichfield courts shows that many of the people involved were very ordinary people, farmers and tradesmen. Very few matrimonial causes were heard annually, and whilst it is possible to analyse them statistically over a period of time, the best way to understand the issues is to study individual causes in detail.

Matrimonial causes heard in the church courts fell into two distinct categories. On the one hand were those involving the legal technicalities of marriage formation. Clandestine marriage was heard as office business, against the offending couple, the officiating clergy themselves, and even the witnesses to such ceremonies. Those who married in this way could be brought before the courts, in spite of the fact that the deed had been done and the marriage was perfectly legal. The background to these causes will probably be very difficult to trace, but in view of earlier office business, community censure may have played a part.

The second category were those heard in plenary form as instance business between the parties, involving both formation and separation. These included causes involving breach of promise, restitution of conjugal rights, nullity, and separation *a mensa a thoro*. Later in the eighteenth century, causes relating to unfulfilled requirements of the Marriage Act were also heard before the ecclesiastical courts. These involved marriage without parental consent and under-age marriage.

Divorce in the twentieth century sense of a complete breaking of the marriage bond could only be achieved by annulment, whereby the marriage was shown to have been technically flawed from the beginning. In this case, the parties were free to re-marry but their children were considered bastards and the wife would automatically renounce any claim on the marital estate. The only form of legal separation - from bed and board, *a mensa a thoro* - was granted in the permanent hope of reconciliation, on the grounds that one or other of the parties had been guilty of adultery or cruelty. The parties were forbidden from re-marriage to other partners whilst either of them was still living. Causes involving the breakdown of marriage, by separation from bed and board, or annulment of marriage on the grounds of precontract, lack of parental consent (for minors), or incest, were heard as instance business and in plenary form.

The purpose of this chapter is threefold. First, to examine the range of matrimonial business of the eighteenth century Lichfield courts. Second, to identify common factors in causes of marital breakdown. Finally, to detect changes in the pattern of these causes,

and to provide a number of individual case studies placing the parties in the context of their families and communities.

A The matrimonial business of the eighteenth century church courts

i) Marriage formation - office business

Technically, these causes were brought by the office of the judge and should be discussed in Chapter Four. However, this would blur the overall picture of continuity of the matrimonial business of the courts and they are therefore discussed below. Professor Brundage has shown that a high proportion of medieval causes were concerned with marriage formation, to determine whether couples were legally married or not, reflecting the confusion about the law in the public mind. (7) Formation, in the form of spousal causes and clandestine marriage, remained a concern of the church courts throughout the sixteenth and seventeenth centuries. Houlbrooke's work on the Reformation church courts has shown their preoccupation with marriage contracts, and their comparative paucity. The maximum yearly average for any time period in the mid-sixteenth century (1519-1569) was only 19 between 1561 and 1563 in Norwich, and an annual average of only 11 in 1560, 1563 and 1566 at Winchester. (8) It was always a small part of the work of the courts. There were less than 9 Wiltshire spousals suits per year in the Salisbury consistory courts between 1565 and 1609, dropping to less than five after 1610. (9) Clandestine marriage causes were also heard in very small numbers, less than eight Wiltshire causes per year between 1615 and 1620. They

rose to a peak of 22 in 1623 and then fell back again. (10) The London consistory court heard a similarly low number of spousals causes, averaging around 30 causes per year in the 1570s and 1639, falling away to 9 causes in the 1620s. (11) No figures have been given for clandestine marriage in these courts.

Clandestine marriage really became an escalating problem after the Restoration. During the first half of the eighteenth century, the number of irregular marriages greatly increased, though an exact number is impossible to ascertain. (12) Work on the later courts has tended to concentrate more on marriage breakdown than formation.

a) Clandestine marriage

A clandestine marriage was one that did not conform to the normal pattern, in that it was performed outside canonical hours, or by an individual who was not a minister of the Anglican church, or not in a church. (13) In 1700, John Craddock, a thatcher in the diocese of Worcester, 'took upon him the office of a priest, pretending to marry many men and women in clandestine and utterly unlawful marriage'. This behaviour led to his being made to give bond to refrain from such behaviour in the future. Legally, these marriages were binding, especially if intercourse had followed. They could also lead to 'extreame trouble and vexation of the said abused and ignorant people'. (14) The participants could not be prosecuted, but the individual officiating and any witnesses present could be brought to answer for the reformation of their souls and the correction of their manners before the vicar general on the grounds that they had encouraged the practice.

These causes, usually heard in summary form, were few in number in the Lichfield courts, evidence for only nine being found in the court papers in the first two decades of the century. There may be others concealed in the Court Books, and yet more can be found in the *quorum nomina* citations of the bi-annual archdeacon's visitation courts. (15) Many irregular marriages may also have taken place in peculiar jurisdictions beyond the reach of the diocesan administration. When confirmation of the marriage of Ann and James Ward of Youlgreave was sought in 1701, the Vicar and parish clerk certified that they did 'positively afferme that they were married ..... in the Peack Forrest' and that 'her Husband aforementioned (now from home) hath the Certificate in his Custody and shall be ready the next probat to produce it'. (16) The extent of peculiars in the Lichfield diocese was considerable and there may well have been many more clandestine marriages than have yet been located in the existing records.

b) Incestuous marriage

The sense of the word 'incest' in this context is not the twentieth century one. In the eighteenth century, it usually referred to those re-marrying after the death of their partners, for example when a widower married his sister-in-law. Such incidents were often reported to the courts which would bring an office cause in summary form against the husband. Only one cause involving 'true' incest involving a brother and sister has been found, in a separation cause, Heming c Heming, discussed on pages 252-257. (17)

c) Bigamous marriages

This was technically a felony after 1604 and such marriages were beyond the jurisdiction of the church courts (18), although Laura Gowing records a decreasing number of cases passing through the London Consistory Court as late as 1640. (19) A recent study of this difficult subject by Pamela Sharpe provides a number of examples from eighteenth-century Essex of the problems created by failure to trace partners who had disappeared. This might lead to hasty re-marriage, invalid when the original partners were still alive. (20) In the second half of the eighteenth century economic pressures led to many households being broken up, when the head of the household had to seek work in other parts of the country, either as part of a seasonal pattern of migration, or in search of permanent employment. (21) The records of the overseers of the poor often provide evidence for these cases, attempts by the poor to create a stable marriage after the failure of an earlier attempt.

There was a further category of 'bigamous' marriages in this period. Occasionally a wife was 'sold' to a new husband. These incidents were usually attempts to regularise a situation in which an existing marriage had broken down and the wife had become involved with another man. To 'sell' the offending wife would possibly avoid accusations of adultery and cuckoldry. (22) These highly pragmatic arrangements had no force in law, but written agreements were sometimes drawn up between the male parties attempting to legitimise the proceedings, to the satisfaction of all concerned. One such case came before the Lichfield courts, while another was found in the Hand

Morgan papers, a large deposit of papers from a legal practice in Stafford.

Under an agreement dated 13 June 1763 between Thomas Moss of Cheadle and John Keeling of Coton in the parish of Milwich, Thomas's wife Mary was sold for two guineas. Both parties described themselves as yeomen, though both were illiterate. It would appear that Thomas had enlisted in the Regiment of Dragoons and had been sent to Germany. Five years later, it was reported to Mary that her husband's friends had been informed by letter that he was dead. (23) It would appear that in fact this letter had been written by Thomas himself. Mary felt the 'most prudent way' to bring her child up would be to marry again, and this she did. Great 'Differences and Disputes' arose when Thomas returned soon after the event. A simple quasi-legal agreement, in the form of an indenture, was drawn up between the two men, the sum of two guineas changed hands, and relations were normalised. The agreement was 'sealed and delivered in the presence of this paper being first Legally stamped', and witnessed by Joseph Parker (literate) and the mark of Thomas Lathbiery. Thomas Moss relinquished all claims to his wife by his mark on the paper, although this would have had no official standing in a court of law. There is no evidence on the document giving the name of the lawyer involved, but the use of a semi-formal layout together with the marks or signatures of witnesses would have been convincing enough to the illiterate. Thomas may have been trying to evade his marital responsibilities and questioned his paternal ones, although the age of child was not specified. Mary's second marriage could have been regarded as bigamous and its validity may have been heard in a civil

court; but there is no evidence of any action in the Lichfield courts in this case. (24)

The other agreement was made at Kirk Ireton in Derbyshire in 1740, when Thomas Frost conveyed Mary his wife and her children to Joseph Handsforth, a packsaddle maker, with whom she had been maintaining an illicit liaison. A written agreement was drawn up by Robert Whiston, a peruke maker from Ashbourne. This was pursued by the office of the judge as an immorality cause, and Handsforth had to pay costs of £9.18s.3d. Thomas does not appear to have been enjoined to do penance. This sale too, would seem to have been an attempt to normalise an existing situation. (25)

ii) Hardwicke's marriage act of 1753

The phenomenal rise in the practice of clandestine marriage in the late seventeenth century and the apparent inability of the church authorities to take action led to questions about the validity of canon law. This form of law was in fact exceedingly pragmatic in that any such marriage was a *fait accompli* with the consent of both parties and to undo them was not within their legal capacity. An Act of 1695 had introduced incremental taxes on births, marriages and burials, in an attempt to raise revenue following the outbreak of war with France. A further Act in 1696 introduced a fine of £100 on the clergy who married couples clandestinely, replacing the previous punishment of suspension from the benefice. (26) The bridegroom could also be fined £10 if he had married without banns or licence. These penalties were designed simply to prevent 'frauds in public revenue' and not to

'punish the offence, as a crime against the spiritual law'. (27) The celebrated cause of John Middleton and Anne his wife c Thomas Croft heard in the King's Bench Division in 1736 was brought about by this Act. (28) The cause had started in the consistory court at Hereford and a prohibition was found to lie. The cause was founded on the grounds that the marriage had taken place outside canonical hours. The proceedings were then transferred to the Court of King's Bench where Lord Hardwicke gave a final ruling. The judgement was preceded by the caveat that 'The evil of clandestine marriages, is one of the growing evils of the times ..... we thought it our duty not to weaken any lawful method by which it may be restrained and punished'. (29) The significance of this cause lies in the fact that it exposed the ill-defined nature of marriage law and the role of the church courts, at at time when the whole ecclesiastical jurisdiction was being questioned. Hardwicke, as Lord Chancellor, could hardly have denied the right of the church courts to hear these causes, when there was no statute law in place. His Marriage Act of 1753 was finally passed after a long and stormy passage through Parliament, as recently described by R.B. Outhwaite. (30)

The Marriage Act was the most important piece of eighteenth century legislation in relation to marriage. It was described as an 'Act for the better preventing of clandestine Marriages' and sponsored by Lord Chancellor Hardwicke, whose knowledge of the legal problems that arose in such circumstances led to the drafting of the Act. His Act demanded that three main criteria were to be fulfilled for a valid marriage. Parental consent, preferably that of the father, was paramount for all marriages of minors. The marriage had to be announced in public by the calling of banns for three consecutive

weeks, or the procurement of a licence from the church authorities. The location of the marriage ceremony was closely defined in that it had to be celebrated in a suitable church by an ordained Anglican minister within the canonical hours laid down by the church of England. Penalties for transgression were stiff, the clergy could be transported, and marriages which were non-compliant with the Act would be declared null *ab initio.* By defining the terms necessary for a valid marriage, the Act also redefined the range of grounds for separation on the plea of nullity. This changed the plea from one of sexual impotence to the more common claim in the later eighteenth century of under-age marriage or lack of parental consent. The Lichfield causes reflect this change very strongly.

iii) Marriage formation - instance business

a) Spousals

A spousal was an informal, verbal marriage contract, made between a couple, often in private (although it should have been witnessed). These contracts could be made in either the present or future tense and might involve the families of both parties in some kind of financial agreement. Disputes over contracts formed a large proportion of marriage causes in the sixteenth and early seventeenth centuries. The number of causes at Lichfield in the eighteenth century was very small and only recorded in the first sample period. There were four causes in all, one of which involved the same couple over two years. Most were brought by the male guardians of the parties involved. One cause was brought by a spinster but the others

involved male plaintiffs and defendants. (31) The latest example was recorded in 1718 and was taken on appeal to the Court of Arches. (32)

iv) Restitution of conjugal rights

There were a small number of these causes throughout the eighteenth century, brought almost entirely by vulnerable women (or by male relatives on their behalf) seeking to restore their legal position in the home, rather than the marriage bed. (33) They were generally brought to claim the validity of a marriage, even one performed clandestinely. These causes could be the result of marital breakdown or economic hardship leading to 'leaving off housekeeping', with the marital home abandoned for lodgings. If the husband continued to refuse to support his lawful wife, she could then sue him for separation and alimony. If she became a liability to the parish, her husband could then be prosecuted by the Overseers of the Poor.

Details of the background of these causes are sparse. As Ingram has pointed out, the church courts were only anxious to establish the facts of a case, not the motives of the participants. (34) In 1731 John Drought instigated a cause against John Taylor, his son in law who had locked his wife Mary out of the house, after three years of marriage. Six years later Mary herself was suing her husband for restitution. On this occasion John had to pay costs of £8.0.7d. (35)

The only male cause in the sample periods was brought in 1720 by Sir William Salisbury of Stoke Golding, in Leicestershire. (36) He took his wife Dorothy, of Stone Hall, to court for restitution of 'Conjugal Obsequies'. A few weeks after their marriage at Cannock he

allegedly announced that he 'could never be easy to live with her' and picked quarrels with her. He 'forced' her to admit to being a whore and claimed that she had 'defiled his bed'. By the autumn of 1719, William's behaviour was becoming suspicious. He tried to obtain bullet moulds, 'in the custody' of Dorothy's sister, to produce ammunition for his pistols which he kept, charged, in his lodging room. At this point Dorothy left home, refusing to live with him again. Perhaps the fact that the bullet moulds were in his sister-in-law's custody can tell us something of William's character and Dorothy's perception of it. The qualities she claimed as a woman of a 'virtuous life and conversation and of a meek and quiet temper and disposition' had not impressed her husband. The fact that she had brought a tax free annuity of £120 (for the term of her life), along with £800 in goods and money to her marriage may have encouraged him to try again. Dorothy's fluent signature would suggest that she was an educated woman and of a strong character. She obviously was not persuaded, and the cause went from Lichfield to the Court of Arches and may have formed the beginning of a separation suit between the couple. Unfortunately, many of the causes brought by women survive simply as citations, their final outcomes remaining unknown.

The numbers of these causes at Lichfield are very small indeed. There were only 8 causes between 1700 and 1719, six by brought by wives and two by husbands. This fell to five between 1770 and 1789, concerning three women, two of whom had been in court for more than one year. The nineteenth century sample saw only six causes, three of these referring to one woman over three consecutive years. The origin of these causes were Killamarsh (Derbyshire), Shirley, and Derby (two), and the dominance of a single county would suggest

document loss. The numbers at Lichfield were less than those of the London Consistory Court cited by Stone. (37) He found 49 causes between 1701 and 1720, 43 causes between 1726 and 1735 and 1746 and 1755. This dropped away to only seven in the final two decades of the century. Unfortunately he gives no sex ratios for the plaintiffs.

v) Separation

a) Unofficial

A married couple living apart were frowned upon by both the church and society at large. Unattached and potentially sexually active individuals could create both social and economic problems in the community and could easily become a burden on the local poor rate. They could also become involved with other married individuals, leading to further marital breakdown. The women might also be driven to prostitution to maintain themselves and their children, especially in the more anonymous urban areas.

For wives deserted by their husbands, life was certainly bleak. It was technically possible to bring office prosecutions against those who lived apart, but these were very rare. Many separations were unofficial, particularly amongst the poor and the mobile, and never appeared in the court records, due to the social conditions which created them. Occasional references surface coincidentally in other types of cause. In 1702 the Office of the Judge brought William Dun, of Kenilworth, to court accused of adultery with Elizabeth, wife of John Arch. Elizabeth was described as 'one of the poor'. She had lived apart from her husband 'for divers years' and was described as a 'poor,

dirty, nasty creature', who worked as a charwoman in a public house. (38) She may well also have been working as a prostitute, and subject to community censure.

A defamation suit brought the circumstances of Martha Bernard to light. In 1713, Martha, wife of Henry Bernard of St. Julian in Shrewsbury was cited to appear accused of adultery with Jesse Okel, junior. She had been living 'separate and apart' from her husband, an apothecary, who had moved to London some years previously and set up his shop in a house in St. Giles in the Fields. (39) Martha and Jesse had travelled to London in 1709-10 staying at various inns and lodging houses, and his father objected strongly to the relationship and the resulting child. Martha responded to the accusation with a defamation suit which was taken to the Court of Arches in the same year. (40)

Other informal separations were bought to light when a litigant in another cause set out to discredit the testimony of a hostile witness. In 1714, for example, one of the witnesses in a testamentary cause described the situation of another, Mary Salt alias Moor, wife of a gunsmith, who lived at Southwark and earned her living as a mantua maker. She no longer lived with her husband after twelve years of marriage; and 'by reason of his ill usage of her, she chose to go on by her former name'. 'She has not lived with him this year and half, by reason of his great cruelty'. Her brother gave her husband's view of the matter. He (Thomas Salt) 'hears his Brother has put her off after he had liv'd with her 13 or 14 years as his wife: there being jealousies betwixt 'em of each others lewd carriage'. (41)

Unofficial separations can also be found in higher status households, such as John Turner and his wife Elizabeth. John Turner was a coalmaster from Alfreton in Derbyshire, who lived with Lydia Boot, formerly a servant in his household. Lydia produced three illegitimate daughters during their time together between 1697 and 1700, to the outrage of the neighbourhood, and John was subjected to an *ex officio mero* investigation which led from his appearance at Lichfield accused of incontinence in 1699 to his appeal at the Court of Arches in the following year. (42)

It is impossible to assess the number of couples who separated unofficially. Many separations appear to have taken place in the lower levels of society, particularly if, for economic reasons, it had become necessary 'to leave off housekeeping' when the head of the household had to leave the area in search of work. Many of the references to couples living apart were found in papers relating to other causes in the court. It was difficult for a separated woman to maintain herself legitimately, but not impossible, as Peter Earle has shown in his work on depositions of the London Consistory courts, where female occupations become visible. (43) Domestic chores such as taking in washing, charring, sewing, and so forth would provide a minimal income. Prostitution would also provide an income, but with a heavier price to pay.

Many couples appear to have parted by agreement and with no formal separation and, most importantly, no expense. By the eighteenth century this practice had probably become widespread, and was beyond the control of the church.

b) Nullity

Until the passing of Hardwicke's Marriage Act, nullity could be claimed on the grounds that one or other partner had been pre-contracted to another, or on the grounds of consanguinity, or finally that the marriage had been unconsummated by impotence on the part of either of the partners.

No cause of pre-contract has been found in the sample periods at Lichfield in the eighteenth century. Stone does not include this in his table of causes in the London Consistory as a separate type, although contract causes were still being heard in the London Consistory down to 1720. (44) Nullity on the grounds of consanguinity seems to have been treated as an Office cause in the Lichfield court and described as incest.

The intimate personal details required in evidence would have proved a major deterrent to court action in cases of unconsummated marriage. One cause for nullity on these grounds has been found in the 1701, when John Emmery simply ran away after eighteen months of marriage to Elizabeth Barker. (45) One cause in which all modesty was cast aside was that of Anne Bayley against her husband John, heard in 1731. John denied having a rupture in his scrotum and claimed that his parts were not of immoderate size. He also suggested that Anne had a large swelling 'on one side of her private parts'. Anne left the marital home and claimed nullity of marriage. (46)

One case which did not come before the courts was that of William Hutton's sister, whose marriage in 1743 was noted by her local

historian brother. The subsequent parting of the couple three months later was also noted. Neither party would discuss the matter, and the explanation for their informal separation was not revealed until after Catherine's death 35 years later. She had written a letter stating, 'I would never consider William Perkins as my husband, by any law divine or human; for the design of marriage is to increase and multiply; therefore I cannot be deemed his wife, because I never knew him as a husband'. (47) Such intimate matters, so closely related to loyalty, embarrassment and shame, would not be easily revealed to the world at large.

After the 1753 Act divorce causes on the grounds of nullity increased. It was claimed on the grounds of lack of parental consent to marriage between minors, and, most commonly, that one of the parties was under-age. A separation on these grounds would leave both parties free to re-marry, on the grounds that the marriage bond was initially flawed.

c) Separation *'A mensa a thoro'*

Causes relating to marital breakdown were fought by a very particular group of people. First, they had to have good reason for coming to the courts and sufficient money to pay their legal fees. Marriage causes were expensive in that witnesses had to be brought to prove their case. Many of these witnesses were servants who would possibly expect further, and private, payments for their assistance. A separation *a menso a thoro* was also a necessity for those seeking a divorce by act of Parliament, though few of the Lichfield causes seem to have gone even as far as the Court of Arches.

The main grounds for separation were cruelty or adultery by either party. The separation causes among the 'middling' sort differed little from those among the upper levels of eighteenth society described by Stone, although money and family estate were obviously not such issues amongst the Lichfield clientele. Here, the causes heard were often those in which violence and extensive adultery were creating problems in the local community. In some cases it is possible to see the wife's behaviour creating problems for her husband in his profession, and in others financial interests coming to the fore. (48) Some of the causes heard related to couples who had moved around the country extensively and had neither settled home, nor neighbours and family through whom to negotiate with each other and society at large.

Allegations of violence figure prominently in the eighteenth century separation suits, examples of which are discussed later in this chapter. The forms that this took were defined along sexual lines. Women seeking separation claimed that their husbands had employed extreme forms of violence, well beyond the limits considered acceptable in contemporary society. (49) Wives also claimed mental cruelty on the part of their spouses. Husbands, on the other hand, claimed they had been in danger of their lives. This danger was often the result of the previously unknown 'lewd and vitious' nature of their wife's character. These claims helped to mitigate the shame and embarrassment of having to admit that they were unable to govern their own household. (50) Physical violence was not a legal offence unless it was carried to excess, indeed it was still defined as a necessary form of correction in some literature. (51) It was comparatively

common in the eighteenth century for women to resort to the local JP, in order to 'swear the peace' against violent husbands. (52) There may well have been mental problems in some cruelty cases; certainly the violence used reported in some of the Lichfield causes would seem to have been gratuitous. Martin Ingram puts forward the suggestion that many husbands resorted to violence when they were under severe economic pressure. (53) By the early nineteenth century cruelty was often taking a more subtle, mental form. Although there are no cases recorded of partners being committed to madhouses at Lichfield, one case of imprisonment within the home has been found. The case of Heming c Heming is discussed on pages 252-257.

If the practice of wife-beating was debateable, adultery was clear cut and totally forbidden. Gowing shows in her book on the early modern courts of London, that women did not sue for separation on the grounds of the adultery of their husbands, which she sees as evidence of the operation of the 'double standard' of sexual morality. (54) The situation in eighteenth century Lichfield was very different. Here many of the matrimonial causes were brought by women, suing for separation on the grounds of either adultery or cruelty by their husbands, sometimes both. It would seem that Gowing's view of defamation in the early modern period where 'the stories that men told about sex automatically received more credit than those of women', did not necessarily apply in post-Restoration period marital causes.

Separation was not a course to be embarked upon lightly, but might be felt necessary where professional reputation or income was at stake. This was particularly true in the case of clerical marriages, and

there were also a number of cases of marital breakdown amongst 'professional and managerial' groups. These included people like the Derby surgeon, Thomas Eaton (55), a Birmingham veterinary surgeon (56), a wealthy Derbyshire coalmaster (57), manufacturers of spoons (58) and brushes (59), and sundry 'gentlemen'. (60) Lesser individuals also passed through the courts, among them a potter (61), tailor (62) and labourer. (63)

The legal consequences of marital breakdown were twofold. If a marriage was declared null and void by virtue of the ineligibility of either of the parties, then the parties were free to remarry but any children would be declared illegitimate. Where a couple were separated from bed and board, the marriage bond was left intact in the hope of eventual reconciliation. Consequently neither party was free to re-marry, but the children remained the legitimate heirs of their father.

In order to obtain this legal form of separation it was necessary to prove either cruelty or adultery. This required the cooperation of the household servants, or friends, to act as witnesses. This form of action would take the quarrel between a couple out into the community, with consequent loss of reputation, and was thus not embarked upon lightly.

B The Lichfield courts

i) Number of causes

These can be divided into Office and Instance causes. In the period 1700-19 there were only 40 matrimonial causes, falling back to 27 between 1770 and 1789 but rising sharply to 42 in the period 1810-29. The proportion of this business never reached 5% of the overall pattern between 1700 and 1719. The annual fluctuations in these causes are shown below.

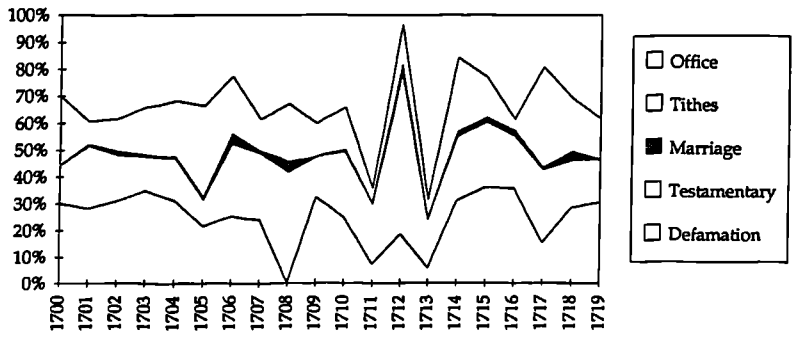

Fig. 5.1 Proportion of matrimonial causes passing through the Lichfield Consistory Court, 1700-1719.

In this sixty year sample, there were only fourteen Office causes, all in the first study period. Three of these related to incestuous marriages early in the century, one each in 1704, 1705 and 1706. The remaining eleven causes were concerned with clandestine marriage, the dates of which are shown on Fig. 5.2 The Office causes all sued male defendants, predominantly rural curates from across the diocese. Three married couples were brought to book and another couple were granted absolution.

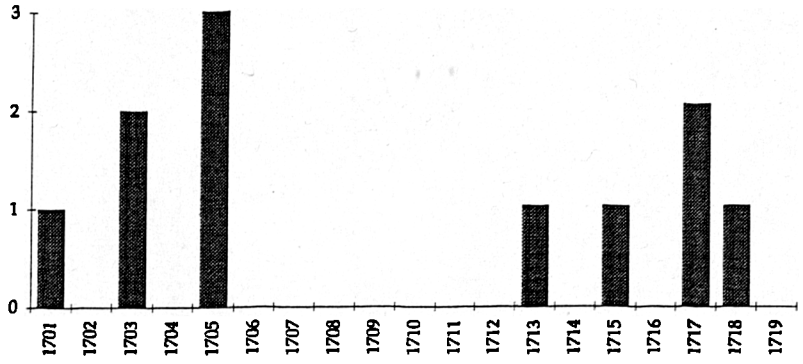

Fig. 5.2 Number of Clandestine marriage causes brought by the Office of the Judge, 1701-1719.

ii) Male and female plaintiffs

In the first sample period, of 28 instance causes (where plaintiffs could be identified) there were seven male plaintiffs of whom four were suing for breach of contract. Of the remaining three, two were seeking the restitution of their conjugal rights and the other suing for separation against his wife, on unspecified grounds. Twenty one female plaintiffs appeared, of which three were seeking redress for breach of promise or contract. Six more were seeking restitution of their conjugal rights. Of the remaining twelve plaintiffs, three were seeking nullity of their marriage on unspecified grounds. The remaining nine were seeking separations, four on unspecified grounds, four on the grounds of their husband's cruelty and one on the grounds of his adultery.

The second period saw 27 causes, of which seven were brought by males. Four of these plaintiffs were seeking separation on the

grounds of nullity of their marriages, three unspecified and one by minority. The remaining three were seeking separations, one on unspecified grounds but two on the grounds of the adultery of their spouses. Twenty female plaintiffs were predominantly seeking separations from their husbands, seven of them on unspecified grounds. Two claimed cruelty by their husbands, another claimed adultery and one claimed both. A further five sought restitution of their conjugal rights. One cause brought by a female plaintiff was unspecified.

In the final period 42 couples came before the courts. Of these, eleven were brought by male plaintiffs, 26% of the total. Ten of these were seeking annulment of their marriages, five on the grounds of their minority, one by affinity and four unspecified. No male plaintiffs sought restitution of conjugal rights and only one sought a separation on the grounds of the adultery of his wife. Ten of the thirty female plaintiffs were seeking annulment on the grounds of their minority or affinity. Six were seeking restitution and one was unspecified. Of those pursuing separation, four were on the grounds of their husbands' cruelty but eight were on the grounds of their husbands' adultery.

Cause types	1700-1719		1770-1789		1810-1829	
	M	F	M	F	M	F
Separation by nullity						
Nullity by Minority			1		5	5
Nullity by Affinity						5
Nullity by Lack of Consent					1	
Nullity - Unspecified		3	3	2	4	
Separation a mensa a thoro						
Grounds of cruelty		4		2		4
Grounds of adultery		1	2	1	1	8
Both				2		1
Grounds unspecified	1	4	1	7		
Restitution of conjugal rights	2	6		5		6
Breach of promise or contract	4	3				
Unspecified				1	1	1
TOTAL NUMBERS	7	21	7	20	12	30

Table 5.1 Types of matrimonial instance causes, by sex of plaintiff over three sample periods, 1700-1829.

[Source: Lichfield Consistory court cause papers]

iii) Settlement origins of causes

The number of causes was small but significant. The separation of a couple in a small parish would have very different meanings to the same event in a larger urban area. Figs. 5.3-5.5 show the settlement origins of these causes. The early causes were mainly from rural areas, which was only to be expected in a period in which the majority of the population lived in the countryside. Interestingly there were no

causes from county towns in the first period, although the developing market towns provided the next largest source of causes.

By the late eighteenth century, Birmingham dominated the diocese in terms of population growth, and with this came the largest number of matrimonial problems. The number of causes from rural areas and market towns dropped, although county towns began to provide the occasional cause.

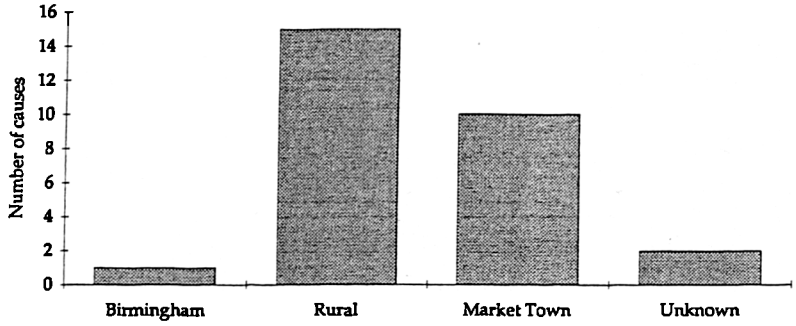

Fig. 5.3 Settlement origins of matrimonial instance causes, Lichfield consistory court, 1700-1719.

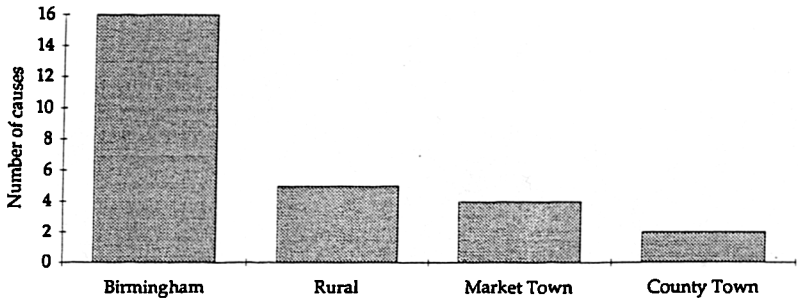

Fig. 5.4 Settlement origins of matrimonial instance causes, Lichfield consistory court, 1770-1789.

By the early nineteenth century, rural settlements once again dominated the pattern. However, these rural communities were very different from those at the beginning of the previous century. The sudden increase in nullity causes, particularly by minority, may represent the wealthier elements of the post-Enclosure farming community attempting to follow the example of the gentry and determine the marital choices of their children. Where occupations were given, the nullity causes involved farmers, one gentleman and a surgeon.

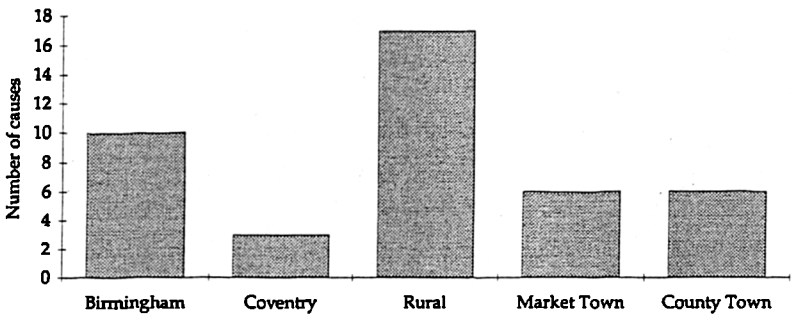

Fig. 5.5 Settlement origins of matrimonial instance causes, Lichfield consistory court, 1810-1829.

Having examined the small numbers and types of these causes and their settlement origins, it is apposite to put them into their social context, through a small series of case studies.

iv) Case studies from the Lichfield courts

The causes reveal much more of contemporary attitudes when subjected to individual analysis. Each marriage was very different, but the factors leading to marital breakup can be detected in each of them. These causes have been reconstructed from the initial libels of the cause and the depositions of witnesses.

Depositions in these causes are slightly problematical. The character of the depositions reflected the needs of each partner. The innocent wife was presented, personally and by witnesses, as quiet and obedient, the injured husband saw himself as considerate and patient. Suggestions of guilt were promoted by suggestions of violent behaviour, both verbal and physical, on the part of the other partner. Swearing, drunkenness, keeping 'unseasonable hours', using language considered lewd or verging upon bawdry, playing cards, not honouring the Sabbath, being in the company of a member of the opposite sex for no justifiable reason, and sexual harassment were all described by plaintiffs of both sexes. Forms of violence quoted in cruelty causes included the use of poison, and threats of drowning, burning and strangulation. Knives and horsewhips seemed to be the most popular weapons used in assaults by both sexes. Most cases involving physical cruelty included threats against the life of an individual, which was seen to be of paramount importance in these causes.

The evidence given by witnesses might be seen as similar to the 'fictions' recorded by Natalie Davis in her study of the cultural attitudes revealed by pardon letters in sixteenth century France. (64) The Lichfield material differs in that the writers were not pleading to a

higher authority for their lives to be spared, merely to their contemporaries in a highly structured situation. In defamation causes the depositions were made by witnesses who had simply been casual bystanders rather than close friends of either party. They knew that any obvious falsehood would be easily exposed by the other side. They knew too that both parties and all the witnesses would have to carry on living in the same neighbourhood when the dispute was finally resolved. Depositions in matrimonial causes were different in that they were concerned with extremely intimate situations. There can be no doubt that they were skilfully 'edited' at the time of their writing, to provide a cogent and circumstantial case for the plaintiff or defendant, to illustrate events that took place over a period of time. Many statements were made by servants with allegiances to one or other of the parties, and must be read in this light. They closely echo the types of statement quoted by Stone's study of upper class marital failures. (65)

In the brief accounts that follow, the initial libels and the depositions have been summarised to provide a picture which takes into account the contradictions in the witnesses' evidence. Causes from each of the three study periods have been described in chronological sequence to give some sense of their changing patterns, rather than by cause type. Many of the witnesses were family servants, often illiterate, whose stay in the household was short but whose memories seem to have been quite extensive. The term 'servant' can also include professionals employed in the house; one such individual was actually a lawyer.

Each case study helps to illustrate the complex variety of circumstances that might drive couples to seek separation. Two causes

involve clerical marriages, which were also vulnerable to outwardly unseen pressures.

a) Anne Mitton c William Mitton, 1715 - Separation: Male violence and deprivation

The marriage of Anne and William Mitton, solemnised in October, 1711 at Wombourne in Staffordshire, foundered on the husband's alleged cruelty. They separated four years later. (66) William's occupation was unstated but his father, Thomas Mitton, settled a real estate on him to the value of £60 and Anne's widowed mother, Ann Marsh, covenanted to William a real estate of an annual value of £20. The background to the events seems to have been an agricultural one, but William's absences from home may suggest a dual occupation.

By any standards, and allowing for Anne's necessity to prove her case, William's treatment of his wife was strange. For most of their brief marriage he was accused of having, 'barbarously and inhumanly and in a most violent and cruel manner assaulted beaten wounded evil-treated and abused the said Ann ..... and often threatening to be the Death of her'. His cruelty included trying to 'Hang, drown and Burn' his wife. He whipped her 'naked with an Horse Whip ..... Ann ... remained Whal'd [covered in weals] and the Scars and Wounds given by the said Whipping have appeared visibly plain, Sore and Raw for three weeks after'. Not only did he physically assault his wife, he also tried to starve her. His unstated business took him away frequently and in his absence he 'lock'd up the provisions ... and deny'd the said Anne a common sustenance and ... deliver'd the Key of

the said Provisions so lock'd up to his Servt or Servts and charging him or them not to give the said Anne any manner of food but to starve her or make her perish for Hunger if possible or oblige her to leave his House to beg Bread'. The use of the masculine term for servants here would suggest that William would not have trusted women to treat Anne so badly.

Returning home, William offered only curses and damnation to his wife, and would 'throw a Key or any thing that was near him in her face and swear he would kill her, and would as often in a Cruel barbarous and Inhuman manner Beat Strike Kick and scandalously wound and abuse her the said Anne'.

In many marital disputes, female servants very often sided with the mistress, male servants with their master. Five of Anne's six witnesses were women. Joseph Cartwright, a literate yeoman, aged 43, had heard of problems in the household and went over with Anne's mother to William's house, 'in hopes to reconcile their difference'. Anne showed them weals on her arms and her husband confessed responsibility. Further threats from William ensured that peace was not made on that occasion.

Three women servants, who had all worked in the Mitton household two years previously, also gave evidence for Anne. Mary Sutton of Stafford, a 26 year old spinster, Joan Riddings a 40 year-old labourer's wife and Mary Brotherton confirmed William's cruelty. Mary Sutton quelled a fire that William had allegedly built up to burn his wife. Mary Brotherton recorded night time whippings by William

and attempts to throttle Anne, as well as his throwing a piece of hot pudding at his wife and, on another occasion, a bowl of whey.

Elizabeth Wildey of Wheaton Aston, a yeoman's wife, aged 58 and illiterate, confirmed the unsteady relationship between William and Anne. They were quarrelling just before Christmas, some two years before. William told Anne to hold her tongue or he would throw her on the fire. Elizabeth reproved William for this and as a result he left the house for a short time. Both parties were pacified on his return and responded to Elizabeth's invitation to a christening on the following day which they both attended 'in good temper'. Jane Herbert, a near neighbour, 42 years old and a literate mercer's wife, remembered a great noise in the Mitton household late one evening. She looked out of her bedroom casement and saw her brother John Mare in the street below and asked him to go to the Mitton's house and 'make peace'. Next morning Anne appeared at her neighbour's house and showed her arms, black and blue from a beating. (67)

Joan Riddings remembered pulling hemp for Anne some two years previously, after which the women went into the house for dinner. Anne and William 'fell into words with each other betwixt jest and earnest' over the meal and Joan returned to her work at the hemp butt. Afterwards, William followed his wife outside and demanded that she should return indoors. She refused and gave William 'a little slapp in the face' whereupon William threatened to fling her into the pit of water on one side of the hemp butt. William dragged her towards the pit but Anne had her child in her arms and she asked Joan to get help. Joan asked William to be quiet and leave

his wife alone. 'He forebore any further violence and went his way ..... and Anne went into the house again'.

On the interrogatories, it was claimed that Anne was never 'froward or peevish but was very orderly in her house except such times as there happened to be differences betwixt her and her husband'. Mary claimed that she had never seen Anne strike her husband and that William was 'mostly in the fault'.

From these depositions the impression given is of a hot-tempered couple whose quarrels were well-known to their neighbours. Anne does not appear to have been a submissive wife. Her own witnesses could not deny that she had responded to her husband's provocation by slapping his face. Female physical violence was a problem rarely discussed, but regarded as particularly challenging to a patriarchal household. It is notable that Anne's mother and some of her neighbours had attempted to mediate between the couple, and that Anne deliberately invited this and sought their moral support by showing them her injuries. She had turned to the court when the relationship became impossible to endure.

William however, put forward a very different view of events. His interrogatories included questions relating to his wife's 'tale bearing or carrying idle storeys [sic] about the towne where her husband dwelt, and calling him a Beggar and that he was come of a Beggarly breed'. He also questioned local knowledge of the physical violence that he had suffered at the hands of his wife. This in itself would have been threatening to his domestic authority, which was probably weakened of necessity by his absences. This may have been the reason

for passing control of the food supplies to another, trusted, male. In some ways the cause is redolent of those found by Ingram in the seventeenth century where male mental instability in the form of incipient paranoia, possibility related to financial problems, was a potential source of conjugal problems. The fact that William refused to pay alimony may reflect either his reluctance or inability to pay.

Anne won her case, and was eventually awarded alimony of 22s per week on 19 March 1715. (68) However, William did not give way easily and a further monitions were sent on 14 June, 1715 and 20 July the same year to remind him of this fact.

b) John Baddeley c Ursula Baddeley, 1780 - Clerical separation a mensa a thoro

This cause is one of an interesting group involving marital breakdown amongst the clergy, and again based on wifely mis-behaviour. John and Ursula Baddeley were married by banns on 20 May 1770. (69) John was a young, unemployed cleric, filling his time as a bookseller and stationer, and living in Cherry Street in Birmingham. His wife Ursula was the daughter of John Walker, a Birmingham factor, and probably a wealthy man. Ursula was only fifteen at the time of her marriage, some witnesses said only fourteen. The couple appear to have run into problems early in their marriage. Ursula's behaviour became so outrageous that she was found sexually harassing male servants in their lodging house, going up to their bedroom early in the morning and pulling the bedclothes off them. The couple decided to separate after a short period, and although John obviously had financial difficulties in his trading venture he was still sufficiently

solvent to support his wife. He had to leave his accommodation in a hurry, but continued to pay 4s. 6d. a week for his wife's upkeep in lodging houses in the town.

Ursula's alleged behaviour was singularly unfitting for a cleric's wife, and this was obviously the cause of the breakdown. Her father did not take her back into his house, for her behaviour would have brought his own house into disrepute. John probably felt that a formal separation sanctioned by the courts was necessary to safeguard his position. However, his financial situation was pressing and the cause may possibly have been instigated members of his family. (70) One of the exhibits in the cause was a letter from Ursula to Mrs. Curtis, Samuel's wife (and Ursula's aunt), dated 7 Jan 1780 from Hilton (71), probably from the household of the child's father. Ursula reported that she had had the child christened Mary, and asked that she should be allowed to hear of its progress, having admitted earlier that the child was not fathered by her husband. She did however enquire 'how Mr. Baddeley does being informed he is very ill'. In her letter to Sarah Curtis, Ursula urged the 'distressful situation she was in, by reason of her husbands never having rendered her Conjugal Rites'. Sarah denied any knowledge of 'impotence or natural incapacity in him'.

The outcome of the cause never seems to have been in doubt. The Bill of costs was addressed to Ursula, and John entered into a Bond in 1781 guaranteeing that he would not re-marry in his wife's life time. One witness asserted that she was not in favour of the parties being divorced and 'cannot tell whether it is the wish of his aforesaid Relations'. However, it would seem that John's family were probably

responsible for trying to sort out the distressing situation in which the couple found themselves.

c) *Anne Heming c Samuel Heming, 1805 - a clerical separation a mensa a thoro*

Another cause involving clerical separation was brought by Anne Heming in 1808 against her husband the Rev. Samuel Bracebridge Heming of Weddington. They were married by banns on 8 December 1800 at the church of St. Leonard, Shoreditch in Middlesex. (72) For a week after their marriage, the couple lived in London and then went to live with Samuel Bracebridge Abney, Anne's brother, at Lindley Hall in Leicestershire. They continued to live there until 2 August 1803, when Anne finally left the marital home.

The reasons for her departure are listed in the articles of libel dated 8 October 1805, when she commenced a cause for separation from bed and board by reason of Samuel's cruelty and adultery. Many of the incidents described in the cause would relate not only to physical violence but also to mental cruelty. The couple's problems seem to have begun in the month following their marriage. Fifteen months after their marriage Samuel's insulting and contemptuous behaviour had led to Anne's spirits becoming 'very much depressed and Broken'. She was confined for six weeks in a room over the largest dining room. In order to explain his behaviour to their neighbours, Samuel 'falsely and untruly declared to and Amongst their Neighbours ... that his said wife was in an Insane State'. Samuel's unprovoked contempt and ill-treatment would appear to have continued in spite of 'every comfort and amusement' being ordered by 'medical persons'.

A year later, Anne was again confined to the room over the dining room, this time for more than twelve months. She was allowed the company of one female servant and given food of the 'coarsest kind', at her husband's whim. He also compelled her to take a strong emetic, which left her ill until the following July or August. Samuel exploited her weaknesses, including the fact that she had a 'particular aversion to and was Greatly Alarmed at the sight of rats, Mice and other Vermin'. He brought a dead rat close to her face, which left her 'weaker and [her] spirits were further injured'. Physical violence followed. Anne had been locked away in an attic room where her brother in law Robert gave her a 'violent blow on her side and also punched her and threw water upon her', claiming that his brother had told him to do this. Anne was still confined to her locked room three months later, watched closely to prevent her making contact with her family.

In February a family friend visited Anne, in response to a letter that she had managed to smuggle out of Lindley Hall. As soon as Samuel found out about this he 'flew into a violent passion and threatened Anne with a 'hundred stripes' of a horsewhip. Anne screamed and rang the servants' bell. She ran out of the room to escape and he followed her into the passage, seized her by the collar of her dress and 'with great violence dragged her along the passage towards her room'. The arrival of the servants prevented Samuel from further violence. In spite of very severe weather, Samuel refused his wife not only a fire in her room, but even a candle. She was only allowed to wear very old shoes, which would not 'keep her feet from the floor'. She was 'seized by her shoulders and forced ... out

into the Garden, where she was compelled to remain for a considerable time' when there was snow on the ground.

Three months later Anne escaped from Lindley to the house of the Rev. John Fisher, rector of the neighbouring parish of Higham. He had been a friend of Anne's family, but was convinced by his fellow cleric's sincerity when Samuel promised to behave himself in future. Anne was duly returned to Lindley. Three months later, in August 1803, Samuel was seen to be treating her with 'affection and fondness'. His possible motives soon became apparent. Anne's brother, Samuel Bracebridge Abney, Esquire, died leaving Anne an annuity of £400 upon her husband's death. Samuel asked Anne to 'join in levying a fine on certain valuable estates', which had been devised to him by Abney subject to payment of debts. Anne refused to do so without consulting her father, Robert Abney of Ashby. Samuel's reaction was to pin her against a wall, and he 'forced his fingers with such violence upon her Breasts as to put her to great pain and anguish', leaving her arms, shoulders and breasts badly bruised.

The final chapter in the relationship began in 1803, when Samuel's twelve month incestuous affair with Catherine Heming, his natural sister, became apparent. They were seen to go together into 'secret and retired places and converse in lewd and immodest manner'. Their activities were observed on 23 June 1804, when the couple went into the hothouse in the garden, where adultery and incest were committed. By this time Anne had left her husband's house to live at Rowton on the Lindley estate for seven months. Later she went to live at the house of Rev James Chartres at Atherstone. Shortly after, she returned to her father's house at Ashby.

The emphasis in this case on mental cruelty is unusual for the clientele of the Lichfield courts, as was the complaint of incest in the twentieth century sense. (73) This couple were of some social standing in Leicestershire. According to John Nichols Anne was Samuel's first cousin and their marriage fell within the prohibited degrees. (74) The fact that they were married by banns, which gave opportunity for objections to be raised, would suggest that they were not afraid of any possible objections, which should certainly have been raised. However, an entry in the Higham parish registers reveals a great deal. The child of Samuel and Anne Hemming was baptised six weeks before the couple married in London. Samuel's confinement of his wife and suggestions of her insanity may well have been an attempt to conceal her until the age of their son was not so easily determined.

The extent of family collusion or objection to the marriage will never be known; there was no suggestion of either in the cause papers. Anne's father, High Sheriff of Leicestershire in 1777, and a JP for Warwickshire and Leicestershire (75), was obviously reluctant to help his daughter overtly until matters had become totally untenable. The fact that his daughter had a child would also have involved certain disgrace. Separation was probably seen as a shameful reflection on her own family, as well as revealing Samuel's scandalous situation. John Fisher, a family friend who provided temporary shelter, had also sought to reunite the warring couple despite powerful evidence that the relationship had broken down irretrievably. Anne's annuity of £400 per year would have had its attractions for Samuel, although he had inherited the estate of Lindley, Rowton, and Fenny Drayton in 1801 from his cousin and brother in law. It is unclear why Anne elected to

take her husband to court for separation *a mensa et thoro* instead of trying prove nullity and thus leave both parties free to remarry. The reason may well have been the annuity due upon her husband's death, or to protect their son.

d) Thomas Eaton c Mary Eaton, 1807 - Separation: damage to professional reputation by wife's unacceptable behaviour.

In 1807 Joseph Corden of Derby, a 50 year old victualler, described how Thomas Eaton, a surgeon from Derby had gone to sea and returned years later with a wife and children. (76) Thomas treated his wife 'with great affection', but Mary was of 'very violent temper and disposition and very extravagant in her conduct', and the couple separated. She eventually returned and Joseph was summoned in his role as Constable to remove her from the house and 'charge the peace' with her. Thomas justified his actions by saying that he was treated so cruelly by his wife that he felt it was unsafe to live with her. Mary was then taken to Joseph's house for a few days, after which 'at the interference of the magistrate and friends he [Thomas] agreed to allow her a separate maintenance of fourteen shillings per week provided she left Derby and got lodgings out of the town'. She returned to Derby again and was discovered in the garret of a known disorderly house, 'in naked bed' with a traveller from London. Mary was reported by the Constable for living in a state of prostitution and left town. She later returned to Derby by a settlement order, bringing a child with her, and turned up at Joseph's house once more. Her husband was informed but refused to have anything to do with her, and told Joseph that she must be taken to the workhouse. The couple never lived together again.

Thomas's work as ship's surgeon was attested by his brother, Richard, a hosier from Derby, as was the marriage at Stoke Damerel in Devon, probably in 1798. Three years before the cause, Richard had visited Thomas, following reports that his wife had 'treated him cruelly', and found him in bed with his shirt torn and blood on his face. In spite of this Thomas was said to have behaved himself with 'great affection towards his said wife'. Richard Scott of Lenton, a framework knitter, had known Mary as a lodger in his house at New Radford for about ten weeks. Within six weeks of moving into this house Mary had committed adultery not only with a stranger, but with George Maltby, a victualler and, from June 1806, with Mr Matthews, a surgeon at the Nottingham Infirmary. She was also frequenting the barracks with an unknown officer.

Joseph's decision to have his wife bound over to keep the peace was most unusual and does suggest an impossible relationship. The semi-formal separation proposed by his friends and the magistrate, paying Mary maintenance to live away from the town, seemed to be the ideal solution to the problem. Joseph seemed quite happy with this arrangement, so long as his wife stayed well away from him. Her return, with a child and under a settlement order, would have been a major professional embarrassment. Her continued scandalous behaviour probably finally prompted him to apply for a formal separation.

e) *Edward Jeffreys c Sarah Browne, 1808*

In 1808 Edward Jeffreys, gentleman, brought a cause against Sarah his wife, claiming nullity on the grounds that he was under the age of majority when they married. (77) Edward was the son of Elinor Jeffrys, who did not marry Robert Jeffreys, of Shrewsbury, Esq., until some time after their child was born. The child was baptised by the local curate in 1788, but there was no entry made in the parish register of St. Mary's. At the time of his marriage, Edward was a cornet in the Royal Regiment of Dragoon Guards, based at York. He had been married by licence in the parish church of St. Dennis in Walmgate on 8 December 1805, having declared himself to be a widower. Soon after his marriage Edward told his mother, and 'requested that she [Elinor] would notice her [Sarah]'. Over three years later, Edward brought his case for nullity, supported by his family and friends. His mother claimed that Edward had no other guardian appointed by the Court of Chancery, and that she had not given her consent to the marriage. (78) The date of his birth was recalled by his mother, and his older sister Jane (twelve years his senior), who remembered Mr. Samuel Sandford the midwife coming to the house. Esther Gill, a hatter's wife, assisted Samuel and remembered the year well, she too being pregnant at the time. Esther's mother nursed Edward and her father took Edward's horses up to York after him when he joined the army. The parish clerk, Edward Dicken, who forgot to make an entry into the Register, nonetheless confirmed Edward's baptism as being on an uncommonly wet day. There had been a notable funeral on the same day.

The timing of this cause - some three years after the event - seems rather protracted but may be accounted for by Edward's

attainment of his majority. He did not have a guardian who could act for him before this. The initial warmth of feeling for his bride may have faded by this time and he may have regarded the technical slip of not having parental consent as a convenient way to wriggle out of an unsatisfactory marriage. His mother may also have colluded in this having experienced a similar problem, Edward obviously being the result of an extra-marital affair between herself and a married man of some status.

v) Common factors underlying eighteenth century separation

Several common factors appear to lie behind these separations. The most common is geographical mobility, with couples moving around from place to place, either for economic reasons, or between houses. It may be that this mobility left them with only weak supporting networks of family, friends and neighbours, who in normal circumstances were often able to mediate and resolve problems between unhappy couples.

The causes that went as far as depositions show the vital importance of servants as witnesses and allies. Stone has commented on the use of servants as spies in upper class households where infidelity was suspected. (79) They were also sometimes employed in this way in inns, where there might be a fear that the establishment could lose its good name and even its licence. The combination of concern over professional or business reputation and over personal reputation seems to be paramount in many of the Lichfield matrimonial causes. (80) Seeking a formal separation remained a last

resort. Responsible older neighbours would often come forward and offer advice and mediation between the parties, but they only intervened when matters appeared to be getting out of hand, and even then they often tried yet again for a reconciliation before the cause went to court. The families of women involved in separation causes seem to have been very reluctant to let them return to their original homes. This was probably due both to the stigma of separation, which would become common knowledge, and to a reluctance to provide the financial support that would be required, not only for the wife but for her children.

The Lichfield court in the national context

What information can this study of the Lichfield records add to the changing pattern of matrimonial business between the sixteenth and nineteenth centuries? Ralph Houlbrooke studied theAct Books of the dioceses of Winchester and Norwich, for the period between 1520 and 1570. The causes here were primarily concerned with marriage formation. They took the form of disputed and unwitnessed marriage contracts or spousals made in dubious circumstances, heard as a simple dispute between two individuals, and quickly resolved in court. Parental opposition to proposed marriages was detected in these causes, when questions were asked about the wealth and status of the parties involved. (81) Matrimonial causes occupied as much as 33.3% of the courts' time at Winchester and 22.3% at Norwich in the 1520s, though by the 1560s it had dropped to 11.8% of the total at Winchester and 9% at Norwich. Decrees of separation were a much rarer form of cause, only 20 being traced in the Norwich courts. Here the majority of the plaintiffs were women. Some indication of the very wide extent of

unofficial separation can be drawn from the survey of the poor in Norwich in 1570 which showed that 8.5% of the married women had ceased to live with their husbands. (82) Houlbrooke noted that 13% of the causes in the London court between 1553 and 1555 related to restitution of conjugal rights, or outright separation, suggestive of urban pressures and lack of kinship support. He also suggests that in the rare cases where annulment was granted, this was on the grounds of a pre-existing contract, rather than consanguinity or affinity. (83) He also found that the courts 'interpreted the law scrupulously and fairly'. (84)

Martin Ingram's work on later marriage formation causes in the Wiltshire courts of the Salisbury diocese between 1615 and 1629, located 148 couples brought to court for clandestine marriage. No record of sentence was found for 12.8%, and the case against 14.8% was dismissed by their proof of marriage elsewhere. A minute proportion, 4%, were ordered to perform penance for their action. The major proportion of the group, 60.8%, were excommunicated and just over a third of these were later absolved, most of which would also have involved performing penance. (85) Ingram's work has shown that marriage annulments were very rare, with only two causes recorded in the Chichester archdeaconry in twelve sample years of a sixty year period. (86) Ely showed marginally more causes, possibly on average one cause per year in the 1580s, although lack of specific definition in the court books may conceal some examples. Only ten annulment causes were traced in the records of the Salisbury consistory over a period of seventy years and some of these may have been defensive actions, to allay local gossip and ensure legality of future actions. (87)

Prosecutions for bigamous marriages were always few in number and brought by the Office until the passing of the Bigamy Act in 1604. Causes brought after this would suggest some confusion about the right to re-marry after a separation *a mensa a thoro.* (88) Separation causes in the Salisbury diocese were also very rare - only 9 causes in 39 years. Chichester (89) and Ely (90) showed similar patterns of business.

The courts of all three dioceses showed a decline in separation causes from the late sixteenth century onwards. Adultery was rarely claimed by either husband or wife. Most causes were brought by wives, claiming life-threatening cruelty by their husbands. This type of cause seems to have continued the earlier pattern. (91) Further work on five of these causes has shown that the husbands involved were suffering either from mental or financial problems, and that their behavioural difficulties affecting the wider family and the community. (92) There were only two causes for restitution in the Chichester courts over a twelve year sample between 1580 and 1640, and the Salisbury courts only heard three restitution causes in the first 39 years of the seventeenth century. (93) These seem to represent a considerable drop from the 13% of business recorded in the mid-sixteenth century in London.

Ingram's work on these records led him to conclude that 'marriages were mostly very stable' at this time, and that 'substantial numbers of prosecutions for unlawful separation are not to be expected'. (94) Some of these marriages may have been 'stable' only in the technical sense that no action was taken to separate formally. He quotes a number of cases where individuals simply split up and went their separate ways. Richard Gough's History of Myddle (written in

1701) contains numerous vignettes of unhappy marriages between the Restoration and the turn of the century, none of which ever appeared in the Lichfield court. (95) Thomas Formeston married a widow, 'a harmlesse and almost helpless woman, but hee had a great fortune with her.' Whilst the money lasted 'hee lived very high', but later he was forced to move to Oswestry and sell ale, and eventually fled to London, leaving his wife behind him, to be maintained by her son by a previous marriage. (96) Thomas Hayward married Alice, a 'a towne-bred woman ... unfitte for a country life', and endured a painful marriage. Gough described her as being so 'shrewish that hee [her husband Thomas] was not able to abide in the house with her, soe that he was forced to go from his buisnesse to the alehouse to gett meate and drinke to suffice nature'. Thomas too descended into debt, eventually being kept by his brother after Alice's death. (97) Women sometimes left their husbands. Anne Baker was married to a local gentleman - 'more to please her father than herselfe' - and having borne him a son, eloped with a Captain, hoping to go to Ireland, only to be abandoned in Chester. Family negotiation ensured a reconciliation with her husband, upon payment of a second portion, but she died soon afterwards. (98) The evidence from Lichfield would suggest that only those cases that required some kind of formal resolution were dealt with in the church courts. Marriages which were desperately unhappy, like those of Thomas Hayward and Anne Baker, albeit potentially unstable, were simply ignored until they impinged upon the community.

Laura Gowing's recent work on the matrimonial business of the early modern London Consistory Courts considered the breakdown of marriages as well as their formation. The need to produce witnesses

in separation causes after 1604 seems to have led to a decline in the number of causes down to the civil war, by which time causes for separation and annulment had become comparatively rare. Here again, husbands tended to sue on grounds of wifely adultery and wives on grounds of life-threatening cruelty or unjustified violence. Male adultery did not seem to have been a sufficient cause for separation. Those accusations of adultery that were occasionally made by wives, were in the wider context of cruelty and desertion. Gowing concludes that 'women's sin dissolved marriage more easily than men's'. (99) Cases alleging adultery by a wife stressed her betrayal of her husband, and also her unwillingness to repent and reform.

Work by Tim Meldrum on the eighteenth century London Consistory courts shows that matrimonial business (formation, restitution and separation) had risen to 24% of their work in 1700-10, falling marginally to 19.8% by 1735-45. (100)

Work by Lawrence Stone on the slightly later Court of Arches records relates to the marital problems of the upper classes, involving property and the succession of estates. His wide-ranging background work has shown that three to four separation causes a year were being heard in the York Consistory court, and by the late 1820s fewer than fifty causes a year were being heard in the consistories of southern England (excluding the Court of Arches). This volume of business was minimal when compared with the recorded number of marriages, running at about 100,000 a year during the first half of the nineteenth century. Stone also notes the collapse of the provincial consistories and suggests that litigants were using the London courts simply for their expertise in this field. (101) However, his figures show that even

here there were only an average of 12.45 causes per year between 1670 and 1799. The highest proportion of these causes, just over 50%, were for separation *a mensa a thoro,* compared with 25% suing for nullity. The numbers of plaintiffs cited by Stone demonstrates that these were a tiny percentage of the population as a whole. (102) At a time when families were considered to have a patriarchal structure, there were a remarkable proportion of female plaintiffs in the London courts. There was an increase in separation suits between 1770 and 1779, to 70% of the three main categories. Restitution occupied comparatively little of the courts' time in the eighteenth century.

Years	**Causes**	**Propn fem pltffs**	**Separn**	**Nullity**	**Restitn**
1670-99	220	64%	89	48	20
1701-20	273*[32]*	58%*[65%]*	124*[8]*	47*[1]*	49*[8]*
1726-35 &					
1746-55	187	59%	90	21	43
1770-99	216*[53]*	32%*[75%]*	153*[21]*	58*[11]*	7*[11]*
TOT = 80	**996**	**Av. = 53.25%**	**456**	**174**	**119**

Table 5.2 Matrimonial business in the London Consistory Court, numbers of causes and proportion of female plaintiffs. *[Lichfield figures for 1701-1720]* (Sources: London Consistory Court, Stone p.428: Lichfield cause papers, Tarver)

To undertake court action in London was undoubtedly more expensive (103) and may suggest that this was the resort of a comparatively small number who did not wish their affairs to be closely scrutinised too close to home. For couples whose affairs had spilled over into the community, and where justice needed to be seen to be done, matters were settled in the local consistories. The problems of those of lower status in society has not been considered in any great

detail from the cause papers of the church courts, although Anna Clark has worked on the marital problems of the 'middling sort' and the lower groups in society. (104)

This study of the Lichfield records has sought to establish the changing patterns of matrimonial business in the eighteenth century and to place individual causes in their social context in this diocese. The declining proportion of matrimonial causes in terms of the total amount of business, noted in the earlier period by Ingram and Houlbrooke seems to have continued until the early nineteenth century. Even so, the proportion of matrimonial business at Lichfield only approached 16% of the total in 1815. This was a very low proportion in spite of the compulsory nature of the business, suggesting a reluctance to use the official process of separation, not only because of the potential stigma but also the expense.

Over the eighteenth century the use of the Lichfield courts would confirm the change from causes relating to marriage formation to those reflecting breakdown. The London consistory court only heard an average of just over 12 causes per year over the eighteenth century, predominantly concerned with separation and nullity, whereas Lichfield only heard around 1.4 per year on average, rising to 2.1 per year in the second and third decades of the nineteenth century. This is probably a reflection of the overall rurality of the diocese.

The sixteenth and seventeenth century preoccupation of the Office of the Judge with spousals and contract causes was replaced by that of clandestine marriage during the late seventeenth and early eighteenth centuries. Office causes for clandestine marriage against

the clergy seem to have petered out in the first two decades of the century, leaving a small number of instance causes for separation and nullity running at the rate of around one per year.

It is rather ironic that the criteria for a valid marriage as defined by Hardwicke's Marriage Act were later used to annul marriages. These causes were based on the minority of one or both of the partners, marriage within the prohibited degrees, or lack of parental consent. Nullity of marriage was often sought by guardians on behalf of minors, probably protecting family interests lower down the social scale than previously thought. Legal and financial self-interest would appear to have been behind this, whereby nullity would permit re-marriage to more suitable partners. A sexual differentiation in these causes also appeared. Women, on the whole, sought separation and were concerned to avoid the bastardisation of their children, maintain their own dower rights, and claim alimony.

In those causes relating to restitution of conjugal rights, both sexes seemed to be attempting to regain their security, although Stone suggests that they may have been used as a precursor for a separation cause, or an informal agreement on maintenance. (105) Once again, the number of these causes is very small, between 2.5 and 3 per decade.

A major change in emphasis can be seen in breakdown causes, where the dominance of female promoted adultery causes can be seen in the late eighteenth and early nineteenth centuries, a situation unthinkable only a century before. Many of the separation causes were brought by wives against their husbands, reflecting the wider female use of these courts that has been noted in London and York, although

numbers were still very small. Women lower down the social scale and from rural areas seem to take the initiative in the early nineteenth century. Perhaps the most important finding of this study has been that women now felt that they could succeed in obtaining a separation on the grounds of their husbands' adultery. These causes came from a variety of settlements, though surprisingly with only two originating in Birmingham. The remainder came from Handsworth, Bolsover, Loppington, Tong and Walsall. There is evidence from other causes that male adultery was not tolerated within the community when it became blatant and persistent.

	1700-1719	**1770-1789**	**1810-1829**
Fem pltffs, n(%)	20 (76.9%)	20 (74%)	31 (73.8%)
Male pltffs n(%)	6 (23.0)	7 (25.9%)	11 (26.1%)
TOTAL	26	27	42

Table 5.3 Proportions of female and male plaintiffs in matrimonial instance causes in three sample periods, 1700-1829.

The clientele of these courts was predominantly those of the 'middling sort', and from their use of the courts it would appear that social attitudes were changing, certainly in urban areas. In rural areas, there seems to have been a reluctance for couples to separate officially, although kinship networks may have been sufficiently strong to support, and intervene in marital relationships. There seems to have been a surprising readiness for friends and neighbours to 'interfere' in the affairs of others, as late as the 1770s and 1780s. Houlbrooke noted that in sixteenth century instance cases there was 'no convincing evidence of vigorous efforts to reconcile estranged spouses' in the courts. (106) The Lichfield evidence from the eighteenth century

would also support such a view. While couples were living together, the community, and their friends and relations would try to mediate between them. Once the cause appeared in court, there was no evidence of reconciliation, although this may have continued unseen. The concern with reputation seen in defamation causes also appears in marital disputes and there may have been stigma attached to separated parties. The overall impression from the Lichfield causes is the constant rate of female participation which, in the case of matrimonial causes ran between 73 and 76 percent over 130 years.

The role of the courts seems to have been concerned with instance business, and, once again, to maintain peace within the community, and contain the 'disobedient, the unquiet and the animous'. It was the responsibility of individuals and the community to try to reconcile those whose behaviour was unacceptable. But when this failed the parties involved might still resort to the church courts to negotiate an acceptable solution to their problems.

References:

1. Miles Coverdale The Christen State of Matrimonye cited in G.E. Howard, Matrimonial Institutions I (Chicago, 1904), p.349.

2. Lady Mary Chudleigh, 'To the Ladies' 1703 in R. Lonsdale, ed., Eighteenth Century Verse (Oxford, 1984), p.36.

3. 20, 21 Victoria c.85.

4. Relaxed in 1215 to four degrees of kinship from the previous seven: J.A. Brundage, Medieval Canon Law (1995), p.75 n.

5. L. Stone, The Road to Divorce, England 1530-1987 (Oxford, 1992).

6. Gowing, Domestic Dangers (Oxford, 1996).

7. Brundage, Medieval Canon Law, p.73.

8. Houlbrooke, Church Courts and the People, pp.276-7.

9. Ingram, Church Courts, Sex and Marriage, p.193.

10. Ibid., p.216.

11. Gowing, Domestic Dangers, p.142.

12. Stone, Road to Divorce. Stone's work on the Lichfield material only considers those causes which went on appeal to the Court of Arches and involved those at the upper end of the social scale.

13. The canonical hours for marriage were between the hours of 8am and 12 noon.

14. WoRO, 795.02/2910.

15. LJRO, B/V/4:1701:Chesterfield Deanery *Quorum Nomina* citation.

16. An extensive peculiar jurisdiction in Derbyshire, adjacent to Youlgreave parish.

17. LJRO, B/C/5/1806:Matrimonial:Heming c Heming.

18. 1 James I.c.11.

19. Albeit at the rate of one a year for both separation and bigamy: Gowing, Domestic Dangers, p.182.

20. P. Sharpe, 'Bigamy and the labouring poor in Essex, 1754-1857', Local Historian 24, 3 (1994), pp.141-2.

21. Sharpe, 'Bigamy' p.141.

22. E.P. Thompson, Customs in Common (1991), Ch.7, pp.427-8; S.P. Menefee, Wives for Sale (Oxford, 1981).

23. It was normal to presume an individual to be dead if they had disappeared for a period of seven consecutive years.

24. StRO D917/11/1: Hand Morgan papers, a large deposit of papers from legal practices in Staffordshire.

25. LJRO, B/C/5/1740/100-110:Immorality:Kirk Ireton (Derbyshire).

26. This action would have damaged both the church and community in that the cleric would have been removed for a period of between one and three years.

27. The English Law Reports Kings Bench Division, XCIV, p.1104.

28. The English Law Reports Kings Bench Division 1903-09, Michaelmas Term 10 Geo 1. 1736 pp.788-802; Trin. Term 7 & 8 Geo II pp.1097-1105; Michaelmas Term 10 Geo II. 1736, pp.774-782; and Michaelmas Term 10 Geo II. 1736 pp.211-219. Middleton and his wife c Croft, prohibition on a libel against a person married clandestinely; for the power of the Ecclesiastical Court over the parson in marrying. This case originated in the parish of Dove in Hereford the diocese of Hereford. John Middleton and Anne Ellis, a widow, were married outside canonical hours, in a private house and without licence or banns. The suit in the church court was commenced by the vicar general of the Bishop of Hereford, and promoted by Thomas Croft.

29. The English Law Reports Vol XXVI, Chancery VI, (1903), p.802 .

30. R.B. Outhwaite, Clandestine Marriage in England, 1500-1850 (1995), pp.75-97.

31. LJRO, B/C/5/1718:Birmingham:Matrimonial:Spousal:Hunt c Jones.

32. LJRO, B/C/5/1718:Lilleshall:Matrimonial:Spousal:Leek c Clowes.

33. 7/30 causes between 1700-19 [6 fem/1male plaintiff]

4/28 causes between 1770-89 [all female plaintiffs]

5/42 causes between 1810-29 [all female plaintiffs].

34. Ingram, Church Courts, Sex and Marriage, p.214.

35. LJRO, B/C/5/1737/Nuneaton:Matrimonial:Taylor c Taylor.

36. LJRO, B/C/5/1720/Stafford:Matrimonial:Salisbury c Salisbury; J. Houston, Causes in the Court of Arches, 1660-1913 (Chichester, 1972): Cause No. 7984, heard in 1721.

37. Stone, Road to Divorce, p.428.

38. LJRO, B/C/5/1702/Immorality:Kenilworth: OD c Dun.

39. LJRO, B/C/5/1713/Immorality:Shrewsbury: OD c Martha Bernard.

40. See page 328.

41. LJRO, B/C/5/1714/Testamentary:Deposition of William Blackshaw.

42. Lambeth Palace, Records of the Court of Arches, Process Books D2120, Turner c Newell, 1700, cause no. 9330 (Houston). This was technically an incontinence cause, which related to an influential individual who had left his wife and was living with another woman.

43. Peter Earle, 'The female labour market in London in the late seventeenth and early eighteenth centuries', in Economic History Review 2nd Series, XLII, 3 (1989). The first reference in the Lichfield courts to female 'industrial' employment comes from 1770 where a woman describes herself as a 'gauze weaver' in her own right.

44. Stone, Road to Divorce, p.428.

45. LJRO, B/C/5/1701/Matrimonial:Cubley:Elizabeth Barker als Emmery c John Emmery.

46. LJRO, B/C/5/1731/Matrimonial:Monks Kirby:Anne Bayley c John Bayley. Anne left home and was suing John for separation on the grounds of nullity.

47. W. Hutton, History of Birmingham, 'The Family of Hutton' (nd) p.30.

48. LJRO, B/C/5/17/Derby:Matrimonial/Separation/Eaton c Eaton.

49. Maeve Doggett, Marriage, Wife-Beating and the Law in Victorian England (1992), p.10.

50. Margaret Hunt, 'Wife Beating, Domesticity and Women's Independence in Eighteenth-Century London', Gender and History 4 (1992).

51. Doggett quotes Chief Justice Coke's denial of this right in 1613 and Chief Justice Hale in 1674 among others: Doggett, Marriage, p.8.

52. In twentieth century terms, 'Binding them over to keep the peace'.

53. Ingram, Church Courts, Sex and Marriage, pp.183-4.

54. Gowing, Domestic Dangers, p.180: 'Men sued their wives for adultery; women sued their husbands for extreme cruelty'.

55. LJRO, B/C/5/1807:Matrimonial:Derby:Separation:Eaton c Eaton.

56. LJRO, B/C/5/1823:Matrimonial:BirminghamSeparation, adultery:Askin c Askin.

57. LJRO, B/C/5/1716:Matrimonial:Denby (Db):Separation, cruelty:Robey c Robey.

58. LJRO, B/C/5/1788:Matrimonial:Birmingham:Separation, adultery: Milward c Milward.

59. LJRO, B/C/5/1786:Matrimonial:Birmingham:Parkes c Parkes.

60. LJRO, B/C/5/1708:Matrimonial, separation:Rugby:Broughton c Broughton.

LJRO, B/C/5/1777:Matrimonial, separation cruelty:

Ladbroke (Wa):Murcott c Murcott.

LJRO, B/C/5/1784:Matrimonial, nullity:Betley (St):Wildigg c Wildigg.

LJRO, B/C/5/1815:Matrimonial, separation cruelty/adultery:Walsall:Whateley c Whateley.

LJRO, B/C/5/1822:Matrimonial, separation adultery:Loppington (Sa):Tudor c Tudor.

61. LJRO, B/C/5/1772:Matrimonial, nullity:Wolstanton (St): Colclough c Beech.

62. LJRO, B/C/5/1815:Matrimonial, nullity:Birmingham:Udell c Grensill.

63. LJRO, B/C/5/1788:Matrimonial, separation cruelty/adultery:Gill c Gill.

64. Natalie Zemon Davis, Fiction in the Archives: Pardon tales and their tellers in sixteenth century France (1987).

65. Stone, Road to Divorce.

66. LJRO, B/C/5/1714:Matrimonial: Mitton c Mitton.

67. LJRO, B/C/5/1714:Matrimonial: Mitton c Mitton: positions additional.

68. The legal costs of £3.15s.8d. were 'taxed' at £2 on 29 March 1715.

69. LJRO, B/C/5/1780/Matrimonial:Birmingham:Baddeley c Baddeley.

70. Sarah Curtis was at pains to deny the involvement of both her husband Samuel, a local attorney and John's grandfather.

71. In the parish of Worfield in Shropshire.

72. LJRO, B/C/5/1806:Matrimonial:Heming c Heming.

73. This was usually reserved for those who had married the sister or brother of a deceased partner.

74. John Nichols, History and Antiquities of Leicestershire IV part II (1811), p.648.

75. Ibid., p.648.

76. LJRO, B/C/5/1807:Matrimonial:Derby:Separation:Eaton c Eaton.

77. LJRO, B/C/5/1808:Matrimonial:Nullity:Wem:Jeffrys c Sarah Browne spinster falsely calling herself Jeffrys.

78. A legal requirement for fatherless minors who were not widowers, as Edward had claimed himself to be.

79. Stone, Road to Divorce p.30. Only one case of servants being offered money for their silence has been found in the Lichfield sample periods: LJRO, B/C/5/1716:Matrimonial:Roby c Roby. John Lowe, a framework knitter from Higham was given an unspecified sum of money by both parties after he had discovered them *in delicto flagrante.*

80. These attitudes are also reflected in defamation causes where fear of slighted credit gave rise to outrage.

81. Houlbrooke, Church Courts and the People, p.63.

82. Quoted by Houlbrooke, Church Courts and the People p.69.

83. Ibid., p.75.

84. Ibid., p.83.

85. Ingram, Church Courts, Sex and Marriage, p.216. Clandestine marriage causes heard in the Salisbury consistory courts and the archdeaconry courts of Salisbury and North Wiltshire. Only 19 cases were brought against officiating ministers who performed the ceremonies, but 55 against those who had been present on the occasion, probably representing a similar number of marriages.

86. Ibid., p.172.

87. Ibid., p.176.

88. Ibid., p.178.

89. 12 sample years between 1580 and 1640 showed only three separation causes.

90. One or two causes per year in the 1580s for separation and restitution

91. Ingram, Church Courts, Sex and Marriage, p.183.

92. Ibid., p.184.

93. Ibid., p.181.

94. Ibid., p.186.

95. Ibid., p.184n.

96. R. Gough, The History of Myddle ed. D. Hay, (1988), p. 228.

97. Ibid., p.279.

98. Ibid., p.159.

99. Gowing, Domestic Dangers, p.184.

100. T. Meldrum, 'A Women's Court in London: Defamation at the Bishop of London's Consistory Court, 1700-45', The London Journal 19, 1 (1994).

101. Stone, Road to Divorce, p.185, in spite of his work on six regional consistories.

102. Ibid., p.428.

103. Transport and lodgings would be required.

104. Anna Clark, The Struggle for the Breeches (1995).

105. Stone, Road to Divorce, p.162.

106. Houlbrooke, Church Courts and the People, p.68.

CHAPTER SIX : DEFAMATION

Tis commonly known that a Man's good Name is a thing he holds most precious, oftentimes dearer than his Life, as we see by the hazards men sometimes run to preserve even a mistaken reputation ..... And to some sort of Men, such especially as subsist by dealings in the World, 'tis so necessary that it may well be reckoned as the means of their livelihood... 'tis no slight matter to rob a Man of what is thus valuable to him'.

The Whole Duty of Man (1715) (1)

The fear of losing my good Name, and credit which are dear to every one that hath the sense to know the value of them, enforceth me to do this action...

Samuel Leigh to Lady Littleton, 1703 (2)

How is it possible for him that makes even the most publick Recantation of his slander, to be sure that every Man that hath come to the hearing of the one, shall do so of the other also?

The Whole Duty of Man (1715) (3)

There is a Lust in Man, no Awe can tame,

Of loudly publishing his Neighbour's Shame

Dr. Garth, Bath-Intrigues: in four letters to a friend in London (1725) (4)

Introduction

The four elements illustrated by the quotations given above can all be seen in the defamation business of the church courts: the importance of a good reputation, particularly amongst those whose livelihood required constant dealings in worldly affairs, the lengths to which people might go to maintain it, the problem of reversing the damage that might be done by defamation, and finally the problems of restraining a natural capacity for gossip. These were disputes that related to individuals, their role in the home and community and the perception of them by watchful and talkative neighbours.

Depositions made by witnesses in other causes give us some idea of the ways in which people saw and judged each other in the eighteenth century. Judgements were often made on the basis of physical appearance, manners and rumours concerning financial status and morality. For instance, Thomas Palmer of Stafford remarked of one of the witnesses to John Philips' will that he 'lookes upon him to be in low circumstances, and by what he appears to have about him the deponent makes his judgement ..... and the said William is reputed a man in mean circumstances in the neighbourhood'. (5) One Thomas Salt was described as a 'poor, necessitous fellow of very ill character'. (6)

Slurs upon an individual's financial probity could not be heard in the church courts, neither could gossip relating to criminal activities. The only type of defamation that could be heard was that relating to moral behaviour, often implying illicit sexual activities. The fact that many of these causes were brought by married women has been noted by historians studying the work of other courts in the seventeenth and eighteenth centuries. (7) Most of the causes in the Lichfield courts also related to female reputations injured by gossip. In 1707, Mary wife of Thomas Crown was taken to court for describing Mary Smith of Burton upon Trent as a 'murderous whore' that had 'hatched two bastards'. There had earlier been a case before a civil law court between the two women which had resulted in Mary Crown spending six weeks in gaol. (8) Four years earlier Elizabeth Grant, wife of William of Grandborough, told Ursula Good she was a 'damned nasty gutted whore', a 'poisoned whore' who had 'taken Physick to poison thyself'. (9) The accusation implied that Ursula had caught the pox and was taking mercury to cure it, or had taken an abortifacient, or had attempted to commit suicide - or all three. (10) They were all highly damaging slurs.

The purpose of this chapter is to examine the defamation causes that passed through the Lichfield court in the eighteenth century. This area of business was the only one to which plaintiffs could resort voluntarily. It was not a legal necessity to clear one's name. Such slurs could simply have been ignored, settled by physical violence or taken before the local Justice or the civil courts. Moreover the church courts could not award damages or financial recompense, although

costs could be awarded to individuals who proved their case. The only punishment they could offer was public penance and excommunication for the recalcitrant. The volume of causes of this type would suggest that individuals were anxious that slurs made publicly upon their character should be removed publicly. There was a concern for the wrong to be corrected and an apology made.

This chapter examines the gender and occupations of plaintiffs and defendants through the eighteenth century. It considers too the settlement types and social contexts in which disputes originated. The rapid development of urban areas and changing patterns of work and social behaviour within them might be thought to provide a suitable environment for the growth of social tensions. Against this the anonymity of rapidly developing urban areas, such as Coventry and Birmingham, might be thought to create a milieu in which personal relationships and disputes were of less importance. Disputes from rural areas could reflect tensions within small inter-related communities that might require early resolution to prevent further escalation of any disagreement. Where a cause progressed beyond the initial citation, the later depositions often give copious detail about the parties involved and the context of the defamatory words. The Lichfield court business has been considered in three sample periods, using both numerical analysis and brief case studies.

Defamation in the eighteenth century

i) Defamation and the civil law

Studies of the activities of the secular law courts in the early modern period and the eighteenth century have tended to concentrate on criminal prosecutions. Defamation causes concerning alleged wrongdoing that would be answerable in the secular courts were likely to be heard in the civil courts. One of the few studies of defamation in the civil courts, by Martin Ingram, has analysed defamation disputes in the early modern records of the courts of pleas for the liberty of Ely, a temporal jurisdiction of the bishops of that diocese. (11) These show that the majority of cases relating to slander [62%] which passed through these courts were related to accusations of theft. They formed 62.5% of all complaints between 1571 and 1595 [38 sessions sampled], falling only slightly to 60.4% between 1610 and 1639 [34 sessions sampled]. Other accusations were more vague and included the words, 'knave, rogue, etc', which were replaced in popularity in the seventeenth century by accusations of extortion and fraud. (12) The remaining accusations heard included rape (a felony, therefore within the purview of the civil courts), witchcraft, fathering bastards, and various forms of homicide. These cases were not numerous. Only 48 were heard in the first 25 year sample and 43 in the second thirty years;

43 of the first group and 30 of the second were brought by men. These low figures would suggest that males were relatively unwilling to sue for defamation. To pursue such cases brought the risk of further investigations which might end in a serious criminal charge. Defamation may have been resolved more effectively by the use of threats or violence.

The civil courts themselves may well have been reluctant to hear such cases. The offence of 'habitually exciting quarrels, or moving or maintaining law suits', known as barratry, was a civil one, tried at Quarter Sessions. (13) So great was the pressure for this type of suit on the Wiltshire Quarter Sessions that the authorities tried to discourage them in the late sixteenth century. (14)

ii) Defamation and canon law

The complex origins of defamation or slander can be traced back to 1222, when a constitution was enacted known as *Auctoritate dei patris*, which made it an offence to impute a crime to another individual, as part of a series of measures to 'maintain the peace of the realm'. It was considered a serious offence against the church to defame anyone 'who is not of ill fame among good and substantial persons', a thirteenth century sentiment resonating through the eighteenth century courts. (15) This medieval distinction was maintained in English canon law, as was the concept of the necessity to restore the reputation of an individual defamed.

Auctoritate dei patris required the element of malice to be present in the words spoken, (16) characterised by the phrase 'and I will prove it', which continued to be repeated in the eighteenth century courts. (17) This intent to cause damage to an honest individual was one of the central concerns of the church courts. Causes involving 'hot words', or words spoken in jest in a humorous context, could not be heard. (18) It was important to know where the words had been spoken, who had heard them, and how many other people were present at the time in order to prove an offence. Two witnesses were required in these causes, as opposed to the usual single witness required by the civil courts.

The method of defamation, whether by writing, speech or the use of gestures or caricatures, was considered immaterial. (19) The use of gestures occasionally appears, for example in 1819 when Katherine, wife of John Garratt sued John Smith the younger. (20) No description of the gesture used was given. There are no causes in Lichfield in this period that rested on the use of gesture alone, words too had always been spoken.

The homilies included a section on 'Contention and Brawling', and discussed how individuals should 'order themselves' when 'provoked to contention and strife by railing words'. (21) 'Contention and strife' were discussed as showing 'unprofitableness and shameful unhonesty'. (22) Defamers were considered to be contentious people,

troublemakers within their communities. It was pointed out that, 'As it standeth between two persons and parties, (for no man commonly doth chide with himself) so it comprehendeth two most detestable vices: the one is picking of quarrels with sharp and contentious words; the other standeth in froward answering and multiplying evil words again'. (23) The person who slandered others 'troubleth all the town where he dwelleth, and sometime the whole country'. (24) The congregation were encouraged, 'above all things to keep peace and unity'. (25)

From medieval times defamation could be taken to law in both the civil and ecclesiastical courts. The appropriate court depended on the defamatory words used. If a moral crime had been imputed the case was heard in the church courts, and if a temporal crime was imputed the case was heard in a civil court. In 'mixed' cases, the civil courts were generally used. Vexatious suits were actively discouraged, implying pressure of business, an unwillingness to bring the courts into disrepute, and a reluctance to encourage such behaviour.

Following the Reformation defamation causes increasingly focused on words that related to personal morality. This may have been the result of the increasing number of 'civilians' trained by the universities, whose work would have encouraged those complaining of secular insults to use their services. In the Lichfield diocese, as elsewhere women could sue those who called them 'whore', or imputed sexual laxity, where evidence of a malicious intent could be seen. A similar range of insults would draw male plaintiffs into the

courts. These usually involved the word 'whoremaster' or, occasionally, 'bastard-getter'. Where depositions were taken, the word 'whore' appears to have been loosely used and referred to adultery, and less often fornication, rather than prostitution. The fact that there was no short, simple insulting word for male promiscuity may have reduced the number of males involved as plaintiffs. (26) Words such as 'adulterer', 'whoremaster' or 'bastard-getter' lack the immediacy and potency of the word 'whore' which was used with such frequency between the sixteenth and eighteenth centuries. Many more women than men appeared in court, perhaps partly as a result of this, both as plaintiffs and defendants. It has also been considered that this imbalance reflects the 'double standard' of sexual attitudes and behaviour in society as a whole. (27) The pattern of office causes suggests that in the eyes of the church, fornication and adultery were sins regardless of the sex of the offender. The very different pattern in instance causes may give a clearer picture of broader social attitudes.

By the eighteenth century, the consistory courts themselves had gradually ceased to bring office causes against sexual offenders. Their main activities now centred on instance business which could be seen as a 'peace-keeping' activity, and restraining gossip. These causes shamed those suspected of malice, and acted as a warning to those whose sexual habits were potentially threatening to the community. They were also, perhaps incidentally, more lucrative for the proctors.

In spite of the damage that could be inflicted by defamation there was no provision under canon law for any punishment other than

penance. Apology had to be made to the individual defamed, to the community and to God, often under humiliating circumstances in front of a crowd of friends and neighbours. This was slightly differentiated in that those words that had been spoken in a public place had to apologised for in public, whereas those spoken in a private place could be apologised for in private. The use of white sheets continued throughout the century and, in spite of one piece of evidence for derision during the recitation of penance in the London courts, it does appear to have been taken seriously. (28) Until the statute of 27 Geo.3,c.44,s.1 defamation causes in the church courts had to be brought within a year of the speaking of the offensive words. This statute reduced the time period to six months, a constraint which would prevent the revival of old feuds when memories had ceased to be accurate.

The only financial issue in a defamation cause was the award of costs. The loser would be charged with the costs of the cause, which, if it had been a long one, could amount to up to £26. (29) However, these bills were subject to 'taxation', or assessment, which usually led to their reduction. Bills of costs seem to have remained comparatively low, due to the problems of raising them nationally. Many scholars have commented on the cost of these disputes, but they have only considered the costs of those that proceeded as far as a sentence. Most did not. One course of action for a defamed person, cheap and efficient, was to invoke the courts by sending a citation to the perceived defamer, with the primary aim of encouraging the use of arbitation outside the courts. The tactic often appears to have worked, and was

cheap. A ordinary citation cost only 7d to be issued from the court, plus a few pence for delivery.

iii) Informal co-operation between civil and canon lawyers

Informal co-operation between different arms of the law can sometimes be seen in defamation causes. One of the largest causes in this category to pass through the Lichfield courts began in 1708 when Edward Owen took Jonathan Critchlow of Coventry, to court. The cause had ostensibly started with Owen's veiled accusations of adultery made in a public place in the city. The matter was taken to the Assize judge who referred the case to be adjudicated by Samuel Wade, Esq., Steward of the City. His efforts to reconcile the two parties in the Panyer, a Coventry coffee house, came to nothing, and the cause was finally brought to the consistory court. The process suggests a satisfactory working relationship between these authorities. (30)

Intervention might also come from Justices of the Peace. The plaintiff in a defamation cause in 1704, Grace Yarlett, was described in a letter to the church court from a JP as 'an idle, lewd and disorderly person' who had served a sentence in the house of correction; the defendant on the other hand was a 'poor, old woman, and hath behaved herself very soberly and quietly amongst her neighbours'. The Justice urged leniency. (31)

Members of the legal profession themselves occasionally used the church courts, though this was rare. In 1814 an attorney from Uttoxeter, Charles Smyth, took Robert Wylde to court for defaming his wife Anne. Wylde, described as a gentleman of Uttoxeter Heath, who may also have been a lawyer, was ordered to do penance. It is striking that even civil lawyers were using the church courts at this late date for this type of cause. (32)

Occasionally, intervention might come from the community itself in the form of a testimonial, demonstrating the extent of the original dispute across the comunity and the necessity for a form of arbitration acceptable to all. William Bostock and his wife were cited to appear in 1704 to answer Kathrine Robinson, a widow, of Hartshorne in Derbyshire. Neighbours explained that William's wife was 'many tymes in a sad distracted or Maloncolly condition w[hic]h wee pr[e]sume to be the sad effects of the loss of tow [two] Children, one scalded to death, and the other killed by a cart'. She was also judged 'not sensible what she saith'. Kathrine Robinson on the other hand was judged by the 22 male signatories to the testimonial to be a 'verry bad woman and of an ill fame and one that profaynes the Lords Day by selling Ale in service tyme'. 'She saith shee keeps a bawd[y] house as she used to doe, wee knowe her to be a profayne Curser and swarer, and filthy talker, shee hath owned herself to be whore'. The neighbours were hoping that 'shee may be Rebucked for her wicked practices'. There was no expression of a wish for any stronger punishment, but Kathrine's presence in the parish was obviously

causing social friction. Such concerns for 'right to prevail' were expressed frequently by witnesses throughout the century in the consistory courts. Once again, the possibility of solving problems in the community through these courts comes to the surface. (33)

iv) The spatial origins of defamation suits between parties

While quarrels and subsequent defamation causes could develop in any setting, they can be grouped into four main areas. The most serious offences were those overheard by a large number of people, in a crowded street or market place. Other disputes took place on the front doorstep, between the privacy of the home and the world of the street. Disputes in the work place could also be damaging, where a number of people were present, many of whom would have known the individuals involved intimately. Finally, many insults were exchanged in alehouses late in the evening and can be described as 'alcohol-related', although here the plaintiff had to prove that these were not merely 'hot words', but uttered with malicious intent.

a) The street and market place

The street was the setting for many quarrels, where they were likely to be heard by a number of people and do damage to a plaintiff's reputation. A combination of alcohol and the street lay behind the three causes involving William Farmer in 1714. (34) There was a 'great

bustle in Derytend Street', during which Mary Jessop, wife of Abraham, was told derisively, 'Get you to Will Farmer in the meadows'. Though the word 'whore' was only implied in the opening discussion of this cause, the 'great bustle' indicated a serious commotion in the street. William sued two married women and William Wood, the parish constable, as a result of this single encounter.

On Ash Wednesday in 1780 Edward Timmings, a 45 year old bricklayer of Brittle Lane in Kingswinford spent the morning altering a furnace for Edward Dangerfield, when he was interrupted by a quarrel between a neighbour, Sarah Thomson, and his employer. Sarah described Edward's wife Mary as a 'nasty greasy heel'd whore' and said she did 'stink upon the ground' as she walked. Timmings said that he had been in Lichfield with Edward Dangerfield two months before the cause was heard, 'in order to make this matter up', and that there was now no quarrel between Sarah and Mary. But this attempt to make an informal peace had obviously failed, and concern was expressed that the defamatory words might be repeated. (35)

A quiet street, between midnight and two o'clock in the morning, was the scene for another cause in Birmingham in 1778. Francis Prime and his wife Ellen were sleeping in the parlour of their lodging house when knocking was heard at the street door. James Lewis was standing in the street shouting, 'Prime, turn that whore your wife out the Bloody Arsed Whore turn her out and let her Answer for herself, for I saw old Robins thro the window fuck her upon the Floor'. (36) Witnesses confirmed that there was no known

quarrel between the two men prior to this outburst. The noise awoke four female lodgers in the house. Two of them testified for the plaintiff, stating that Ellen and her husband did not 'keep a house of bad fame and harbour common women and divers wicked persons in the night time, and that they are not looked upon as a public nuisance to the neighbourhood, or encouragers of riot, disturbance and scenes of debauchery'. James' motives will never be established, but his insinuations that the Prime's kept a house of bad fame may have echoed wider local opinion about the household.

b) Between home and street

The most common 'public place' insults, after the alehouse, were those at the house door in the street, and on the road between towns. (37) Not all disputes took place in the street although they could be heard there. William Bagnold, a weaver, described in 1703 how he had heard a violent commotion inside a neighbour's house in Walsall. (38) He

> went in great hast to the said Johns hous door, and found it locked and hearing a great bustle in the said hous run back to his own hous for an Axe designing to force open the door but just as this deponent came again to the door it was set open and this deponent went into the said Massey's hous and there found the plaintiffs husband holding the sd Massey fast by his cravatt or neckcloth and the arlate Wm Mousley the plaintiffs son beating the said Massey's wife and this deponent fell a chiding the said Wm and immediately Mr Leigh the

defendant came into the hous being next neighbour to the said Massey and askt the said Wm if he designed to murder the woman in her own house: and thereupon the said Wm gave the sd Mr. Leigh a many ill words and call'd him a Bandy legg'd rogue and a bandy-legg'd dogg and the said Mr. Leigh call'd the said Wm a Clown and a Logger-head but never call'd him sonn of a whore or a bastard....

Mr. Leigh's response was, under the circumstances, remarkably restrained, observing merely that Mousley's comments were 'like his breeding'. Leigh had also been described by William Mousley as a 'paunch belly'd dogg', but Mousley obviously felt that the terms loggerhead and clown were 'noe ill language'. Perceptions of ill language in this context seem to have been strictly associated with the sexual connotations which would have brought it to these courts. In this case, the defamation had arisen as a result of a long-standing feud between the Mousleys and the Masseys. Technically this dispute was the result of 'hot words' but the accompanying events may well have been taken into account so that a discussion of the case in the courts could be utilised to defuse a situation which was getting out of control in the neighbourhood. Violent confrontations were usually dealt with by the parish Constable, and were outside the remit of ecclesiastical law.

c) In the workplace

Disputes were also often recorded in the workplace, both in agricultural communities and in towns. In a typical cause in 1736

Mary Gewin of Shrewsbury complained that Thomas Rogers of Stepleton had defamed her in William Gewin's fold yard in the parish of St. Chad in Shrewsbury. John Dicken was only ten yards away when the words were spoken and heard them clearly, as did Mary's daughter who was also present. (39) As was often the case, the defamation suit formed part of a wider dispute between the parties. There had already been a civil case relating to the non-payment of wages between Thomas and Mary's husband, William.

It was not even necessary for the person defamed to be present when the words were spoken. Richard Wright, a chirurgeon, made an unwise remark at Derby in 1735 about one of his patients, Elizabeth Lowe, following an argument over a bill. (40) There would appear to have only been two other people present in his consulting rooms at the time, but the element of malice in Richard's claim that he could prove Elizabeth to be a whore led to his appearance in court. Even words spoken in a quiet place between two or three people could be reported back to the individual defamed, and trigger a cause.

d) Alcohol-related quarrels

Alcohol featured in many causes, and sometimes the local alehouse provided the setting. Following a rather comical incident, Anne Steventon, wife of Thomas of Acton Reynolds in the parish of Shawbury (Shropshire), took Richard Gough to court for calling her a 'Jilt and a common Strumpet'. (41) John Sherwood, Anne's brother-in-

law explained the circumstances. Thomas kept an ale-house and Anne, serving there, had

> draw'd a mug of Ale and set it before the said Defendt. He offer'd to pay her Twopence for the same upon which she said that the Twopence would pay for the Tobacco and she would take the Ale againe if He would not pay for it upon which she laid hold upon the mug and in the scuffle some ale being shed on the Table he [Richard] threw the remainder in her face and thereupon she took his Peruke and rub'd the Table with it and struck him with it in the face.

Technically, there is no evidence of malicious intent here and the accusation could be assumed to have been merely hot words. In this case, tempers did not cool. There are hints of other matters in the background, and the Steventons may have been prompted in part by the risk of losing their alehouse licence, should Anne not take action to maintain her good name.

v) The effects of defamation

The effects of defamation varied according to individual circumstances. Women suffered more than men, though the position was more complex than the 'double standard' might suggest. In the causes heard before the church courts there was no financial incentive

for litigation, merely a determination to restore the 'good name' of the individuals defamed, and to see the defamers made to do penance. Plaintiffs were also anxious to stem the development of a 'common fame', which might lead to further troubles in the form of prosecution for adultery. To call a woman a named man's whore was considered particularly grave. Not only could it result in her prosecution for adultery or fornication, but for a married woman it could endanger her marital relationship. When William Horner of Idsall said Joan, the wife of John Young was a 'whore, and Ned Walters has lain with thee ... and knows thee ... as well as thy ... husband doth', he was casting a serious slur too at John Young as a cuckold. (42) The damage such slurs could do to relations between husband and wife is sometimes evident in the depositions. Mary Rivington of Pentrich complained that defamatory words by Hannah Rhodes, a widow, had meant that her 'husband is not soe kind to her' as formerly. (43) For single women, including widows, the taunt of 'whore' was also damaging, especially when there was a named partner as an additional twist. Several cases featured hurtful allegations of having and spreading venereal disease. In 1713 for example, Ann, wife of Joseph Buck, told Margaret Cotterell, a widow, that she was a 'poxt whore and poxtest the sailor'. Although the dispute took place in a private house, the injury to Margaret was too great to ignore. (44) Defamation of this kind might result in the victim becoming ostracised within the local community. As a 'known whore' she would be excluded from the normal relationships that bound parish women together. Marriage (or remarriage) would become much more difficult, and work opportunities were likely to be diminshed too. Sexual transgressors might even suffer in the community as the targets of cuckold's horns, rough music and skimmingtons. (45) In other words, disputes could

become a matter of overt community concern. All these were forms of ridicule, ostracism and exclusion by the community.

For men too, defamation could bring serious dangers. While gossiping in a Loppington (Shropshire) household one morning in 1724, Alice Shingler remarked to Elizabeth Chidlow that Philip Hales was the father of two children born to a local girl, Mall Griffiths. She also declared that he was a 'whore Master Rogue for bribeing the Wench to lay the Children on Thomas Birch'. (46) Mary (Mall) was unmarried and her last child had recently been born in the parish. Elizabeth said she did not know 'who found her necessaries during her lying in'. She did remember that Hale's wife had asked Mall whether he had ever had anything to do with her, and that she had replied that Thomas Birch was the father of her child. (47) Alice Shingler's words were sufficiently serious for Philip Hales to bring a suit and press it to a court hearing. Such talk could have broken his marriage, and left him financially responsible for a child that was not his. The gossip had to be suppressed.

The wider implications of sexual reputation can be seen in a variety of other contexts. Depositions in a matrimonial cause between Samuel Roby and Alice his wife in 1716, show that their servants at Castle Donington left the house when Mr. Roby entertained ladies of dubious virtue, either in disgust or to protect their own good names. Mrs. Roby's own outrageous behaviour at an inn in Higham led to the servants there being ordered to watch her room, to prevent the inn from becoming known as a bawdy house. (48) Some cases were

triggered by concern for the reputation of the household in general. Mary, wife of David Leake of Wolstanton objected to the behaviour of Martha Bayley, probably a lodger, because she was a 'whore and made my home a bawdy house'. (49) An Office cause in 1704 involving the rector's housekeeper in Whitchurch was also brought partly to prevent the rectory from being described as a bawdy house. (50)

B The work of the Lichfield Courts

The volume of business, 1700-1830

The volume of defamation causes in the eighteenth century has yet to be examined comprehensively, but early indications suggest that it varied over time, and from court to court. The volume of defamation business in the Lichfield courts was substantial - 1502 causes have been listed in the 60 years of the sample periods. The number of causes per year actually rose through the eighteenth century, until it peaked at 75 in 1780. After this the numbers fell unevenly until 1815 when they began to pick up slightly. The only directly comparable material comes from three eighteenth century courts in the diocese of Bath and Wells, (51) analysed by Morris, and the London consistory courts between 1700-1745, analysed by Meldrum. (52) The work of the Bath and Wells courts compared with that of Lichfield for the period of 1770-1779 is shown in Fig. 6.1. The

defamation business of the Bath and Wells courts peaked in 1736 with a total of 57 causes, whereas that of Lichfield peaked in 1780. (53) Defamation in the Bath and Wells courts occupied a smaller proportion of the overall business throughout the period, although, with tithes, it still formed the dominant group of causes. The actual cause numbers per year ranged from 6 to 22 from Somerset, while the Lichfield courts were hearing between 13 and 38 causes per year in the consistory court over the same period. (54) The proportion of defamation business at Lichfield between 1770-1789 ranged from 35-40% as shown on Fig. 6.2.

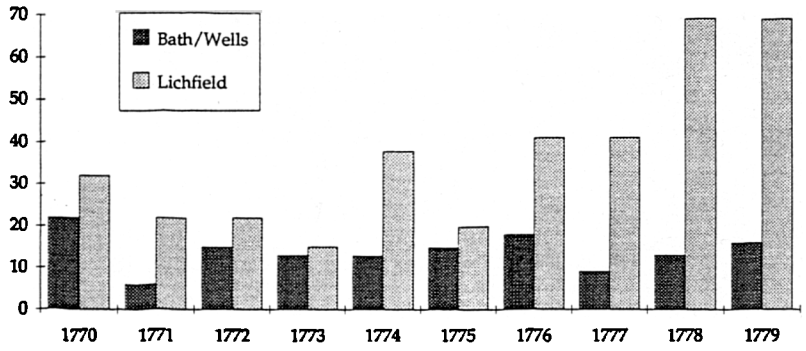

Fig. 6.1 Causes per year in the Lichfield and Bath and Wells courts, 1770-1779.

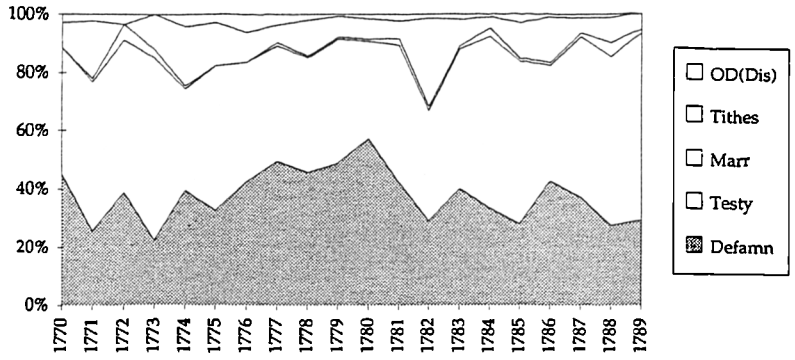

Fig. 6.2 Defamation business as a proportion of the total business of the Lichfield courts, 1770-1789.

Meldrum's work on the London courts has identified a total of 346 defamation causes between 1700-1710 and a further 393 between 1735-45, an average of 31.4 for the first period and 35.7 for the second. In each of these periods defamation accounted for around 60% of the total business of the court. These figures none the less represent a drop in the volume of defamation causes when considered in relation to the rising population of London over this period. The London Consistory Courts had been hearing an average of 33.8 causes per year between 1606 and 1640. The number of households directly involved in these disputes was very small, although the number of witnesses increased community involvement. (55) Each dispute itself would also have been a source of considerable gossip and speculation in the neighbourhood.

There is no evidence to suggest that verbal abuse was declining, or changing its linguistic form. Canon law certainly had not changed, although the influence of the church was diminishing. There are two avenues for further exploration. First, the middling-sort may have become more reluctant to use these courts preferring to seek financial recompense through other channels. Second, of the middling sort who had previously used the courts most may have adopted more 'polite' speech patterns. The ever-increasing numbers of 'non-respectable' poor may simply have had little concern for reputation, or have been unwilling to spend time and money pursuing a victory that was purely symbolic.

i) Settlement origins of Lichfield causes

Given the extent of the diocese and wide range of settlement types involved, we need to analyse the local origins of defamation disputes. There is a lack of reliable information on population growth in localised areas in the eighteenth century, and a simplified pattern of analysis for the status of the parish of origin of these causes has been used. Urban growth in the eighteenth century diocese was considerable. Schofield suggests that the population of Coventry rose from 5-7,000 in 1700 to 13,000 in 1750 and 16,000 by 1801. (56) Shrewsbury appears to have followed a similar growth pattern. Birmingham expanded from 8-9,000 in 1700 to 24,000 by 1750 and 74,000 by 1801. The development of Stoke on Trent is not charted but the

population is given as 23,000 by 1801, though this was the result of an atypical settlement development. (57)

Dispute origins have been analysed on the basis of four very general urban and rural groupings. First, the three county towns involved have been taken to constitute urban areas, by virtue of their administrative and trading functions. Second, Birmingham and Coventry have been treated separately on the grounds of their anomalous size and growth rates. These are the most interesting areas where the comparatively anonymous atmosphere of fast growing towns might not be expected to generate either long running disputes, or concerns over reputation. Third, other areas, including Walsall, Uttoxeter, Chesterfield and other small, probably fast-growing, towns are included in a separate category of market towns, with developing trading functions. Finally, the rural parishes have been treated as a single group. This latter group obviously predominated in each of the counties in the diocese. Even in 1811, 74% of the population of England lived in the countryside. (58) The causes from these rural areas probably represent long-running and intractable problems. Proof of this is extremely difficult where only citations remain, but work on quarter sessions records in conjunction with the church court records may reveal further information.

ii) Clientele of the Lichfield courts, social origins of plaintiffs and defendants

While matrimonial and testamentary business had to pass through the church courts, defamation provided the largest voluntary group of plaintiffs. (59) The social classes involved in defamation causes can be traced through the cause papers, and in 1770 these can be compared with the occupations of residents given in a unique listing in Sketchley and Adams' Birmingham street directory, to assess the extent to which the users of the courts reflected population pattern as a whole. (60)

The form of wording used in citations gives a glimpse of both plaintiff and defendant in 85 of the 771 causes (11%) which passed through the courts between 1770 and 1789. These numbers are regrettably small, and most useful for the decade 1770-1779.

Analysis of the trades of the plaintiffs in defamation causes shows 45 different occupations listed. Of these, yeomen [8], victuallers [8], clerics [7], farmers [5], gunlock filers [5] and labourers [5] were the most frequently mentioned amongst plaintiffs. The occupations of defendants were more frequently given in the records as a whole, due to the form of the citations used. These included farmers [49], victuallers [44], yeomen [36], labourers [26], butchers [19], blacksmiths [17], cordwainers [15], gentlemen [14] and barbers/peruke makers [13].

These were the most common among a total of 154 different occupations given.

Polly Morris has suggested that 'higher literacy' may have enhanced the value of male witnesses in defamation causes, but the evidence from Lichfield does not appear to bear out this point. (61) Witnesses were simply those who were present at the time and who could also be persuaded to attend court, factors which seldom took literacy into consideration. In many causes, witnesses were individuals of a similar social group and often of similar trades, i.e. cloth or metal, as in the Owen c Critchlow cause from Coventry. Often the witnesses were a random group of by-standers. A tailor, spinster and mole catcher were among the miscellaneous witnesses in 1718 in Sutton Coldfield when Elizabeth Powell complained of being described as a 'pockyfied whore, a bawd and a strumpet' in the open street. (62) A cause which began with a quarrel at Tutbury on winter fair day in 1713 shows the same pattern. Thomas Powers, who kept a public house, abused Mary, wife of William Mackrory, and claimed that John Statham 'did fuck her or had fuck'd her'. The witnesses cited were simply the people who happened to be present in the public house at the time and included a bricklayer, a labourer, a weaver and his brother, a yeoman, and Elizabeth Warreler, servant to Thomas Powers. Her master had been sitting in the chimney corner 'very far gone in drink' at four o'clock in the afternoon. (63)

In 80% of the 85 causes where the occupations of plaintiffs were given, the cause was brought nominally by a married woman, whose

husband's occupation was stated. For example, Esther, wife of Richard Cotton, button maker. The same form was also often used for defendants. Evidence from depositions suggests that many of these women worked but they were always described in terms of their husband and his occupation. Male defendants were identified by their occupations in most causes, for example, Richard Millus, whittawer and collar maker or Jonathan Taylor, glazier. Occasionally a cause was started by a man with his wife, but this was not common, and these causes may refer mainly to accusations of cuckoldry. In such circumstances it was necessary for the wife to be included in the proceedings, in that she was indirectly accused of adultery. On some occasions a further identifier is added in terms of the generation of the individual, i.e. the elder, the younger giving cross-generational references.

iii) Analysis of three sample periods

The number of causes passing through the Lichfield courts is such that the data can be analysed numerically in three separate ways in each of the sample periods, 1700-1719, 1770-1789 and 1810-1829. The parish of origin can help to define whether the causes arose in urban or rural areas. It might be expected that most of these disputes would arise in the fast-growing urban areas in the diocese. Secondly, the occupations of plaintiffs and defendants can be identified, albeit on a very small scale for the first and last periods. The period 1770-1789

gives a great many occupations of both plaintiffs and defendants. This provides a broad picture of the social groups involved in the protection of their reputations and also of those who impugned them. Finally, the causes can be analysed in terms of the gender of plaintiffs and defendants, an issue which has been highlighted in work on the early modern courts. The status of women involved in these causes and those of their opponents can be identified from citations. It is also possible to glimpse a little more detail of the number and nature of male to male confrontations in the courts. Finally, brief case studies can begin to place some causes in their social context.

a) 1700-1719, n = 625

The number of causes per year is shown in Fig. 6.3. The lack of causes in 1708 was the result of the large case in the Court of Arches in which the personnel of the courts were involved in that year. (64) An explanation for the comparative lack of causes in 1711-13 is not yet forthcoming. Fig. 6.4 breaks the total figures down into male and female plaintiffs and the total dominance of the latter is apparent. With the exception of 1716, the smallest years had no male plaintiffs appearing.

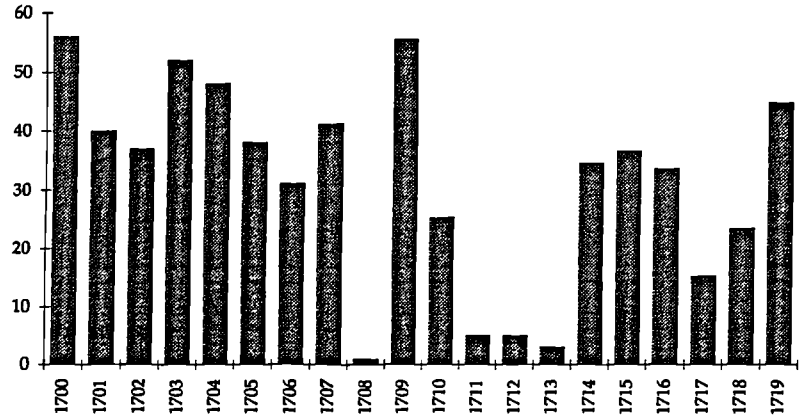

Fig. 6.3 Total number of defamation causes, Lichfield Consistory court, 1700- 1719.

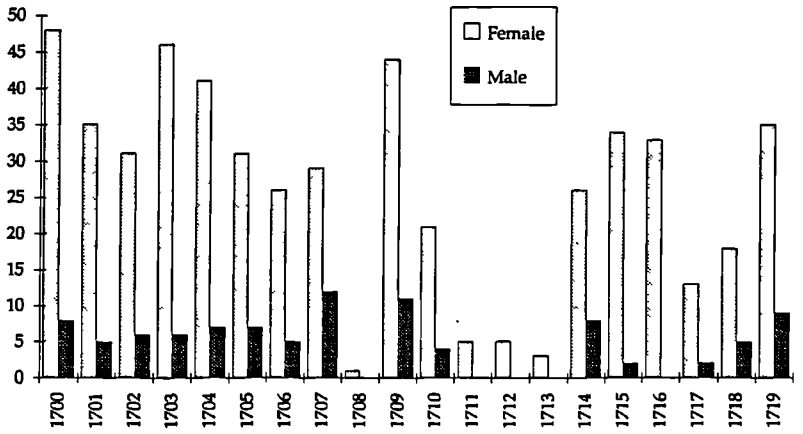

Fig. 6.4 Male and female plaintiffs in defamation causes, Lichfield Consistory court, 1700-1719.

The origins of these causes by county suggests the domination of Staffordshire and Warwickshire, whose causes occupied all the defamation business in 1713. Derbyshire causes formed 50% of the court's work in 1715, but otherwise averaged between 20 and 25% of the total. Causes from Shropshire were numerically the least, ranging from 5 to 25%. These counties have also been examined in terms of the rural and urban origins of the causes and the results can be seen in Fig. 6.5. Here the causes from the county towns of Derby and Stafford form a minimal number of the total for each county. The town of Shrewsbury, on the other hand, actually generated more causes than the rural parishes in 1702. The Warwickshire causes exclude Warwick, the county town, but include those causes generated in Coventry and Birmingham. In spite of these two large towns, the rural origin of defamation causes still runs at 50% and more in 11 years of the sample. Birmingham dominates the pattern in only five out of the twenty years considered. Coventry causes tend to fluctuate more, ranging from 5 to 45%.

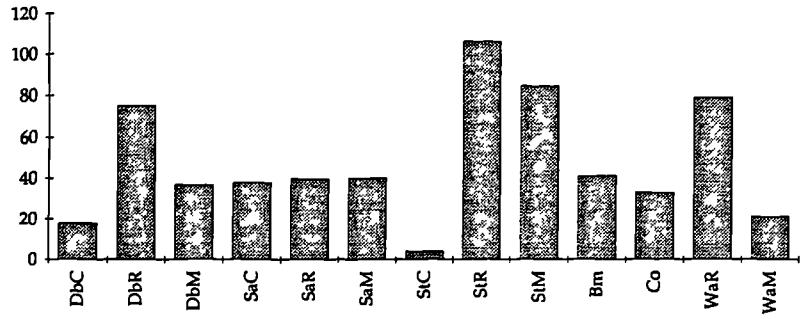

Fig. 6.5 Settlement origins of defamation disputes, Lichfield Consistory court, 1700-1719.

KEY: DbC = Derby: DbR = Rural Derbyshire: DbM = Derbyshire market towns: SaC = Shrewsbury: SaR = Rural Shropshire: SaM = Shropshire market towns: StC = Stafford: StR = Rural Staffordshire: StM = Staffordshire market towns: Bm = Birmingham: Co = Coventry: WaR = Rural Warwickshire: WaM = Warwickshire market towns.

The first data sample only gives the occupations of 10 of the defendants, which included a landlord, a victualler's wife, an innholder, two millers, a locksmith, a constable, a chandler, an alderman, and a cleric. The plaintiffs included a gentleman, a miller's wife, an alehouse keeper's wife and another cleric. The parties in these disputes were in fact of much the same social groupings - lesser tradesmen, farmers, craftsmen, and used witnesses from similar groups. The presence of clerics, a gentleman and an alderman demonstrate some social stratification in the use of the courts, although the extent of this cannot be fully explored.

The status of the women plaintiffs is shown in Fig. 6.6 where the high proportion of married women would appear to continue the pattern found at York by Sharpe, averaging about 60% of the annual total. It must be remembered that marriage was the normal status of women at this period. Spinsters were fewer and less well represented, comprising around 20% of plaintiffs per year, even though this represented an increase over earlier periods. This figure may have been a partial reflection of their financial circumstances, many spinsters worked long hours as low-paid domestic servants. Their employers would not have been willing to allow them to become involved in such litigation, which would have taken them from their work and might bring unwelcome publicity. Servants themselves were a highly mobile group and would tend to move away from trouble. Without male support and encouragement it was also difficult to bring a cause to the courts. The husbands of women insulted by defamatory remarks would have a vested interest in their wives clearing their names; servants were often separated from their male relatives, after moving away from the family to find employment. A few spinsters were minors, acting through guardians who were probably trying to protect family interests. The number of widows acting as plaintiffs was very small, and there were none in five of the twenty years. The number of women whose status was not indicated, reached 20% in 1712.

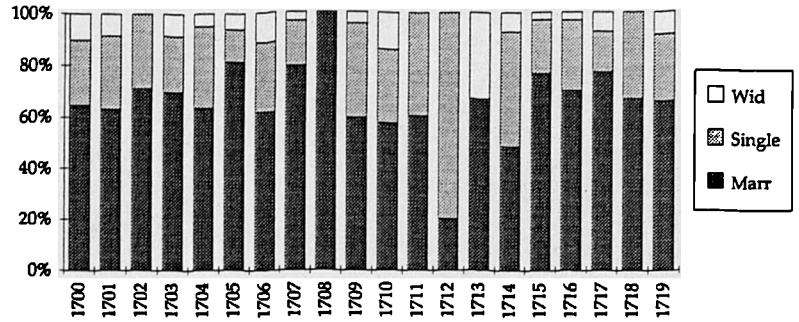

Fig. 6.6 Status of female plaintiffs in defamation causes, Lichfield Consistory court, 1700-1719.

The language used in these early causes is reminiscent of that of the pre-civil war causes. In 1707, Thomasina Bate objected to being called a 'white-livered quean' by Mary, wife of Thomas Littleor. (65) The title of 'most errand whore in Birmingham' was used by Sarah, wife of James Jones against Mary wife of Joseph Taylor in 1716. (66)

b) 1770-1789, n = 771

The total number of causes rose dramatically towards the end of the eighteenth century with a very high number of causes originating in the Birmingham area. This period saw 771 defamation causes pass through the Lichfield courts, 32.2% of the total business for those two decades. The volume was second only to testamentary causes which were running at 41.3%. These causes peaked in 1780 at

75, following two years when the courts heard 70 causes annually. Business fell back to 55 causes in 1781, and 40 in 1782. There seems to have been a significant decrease in the number of Staffordshire causes and an increase in Warwickshire causes at this time. The latter were running at up to 50% of the total until the end of the decade. When these causes are analysed in a little more depth it can be seen that, although Birmingham dominated defamation business, rural parishes still provided 30% of causes.

Figure 6.7 shows the proportion of defamation business by county and the dominance of Warwickshire continues to increase. The number of causes originating in Derbyshire and Shropshire continues to fall, varying between 25 and 35% of the annual total over the period. The high percentage of causes from Staffordshire in 1770 - about 45% - then falls away over the next twenty years. The proportion of causes with urban origins also tends to decline, with the exception of Warwickshire, where Birmingham provides the majority of the causes. The number of causes from Coventry also tends to decline at this time.

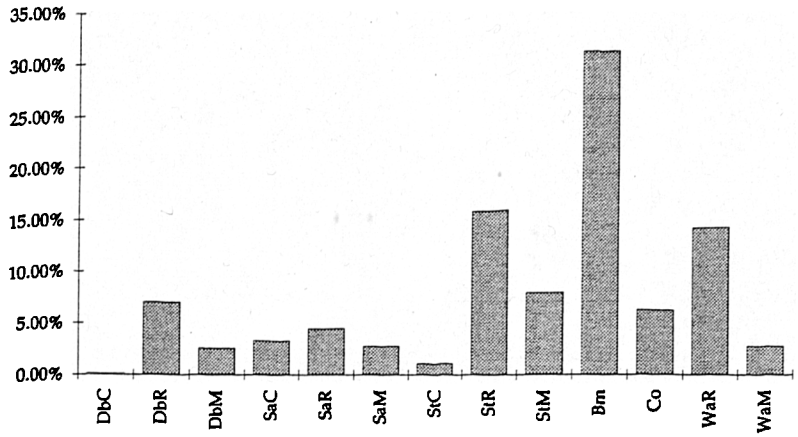

Fig. 6.7 Settlement origins of defamation causes by county, Lichfield Consistory court, 1770-1789, n = 767.

This period is unusual in that, from 1770-1780, the occupations of both plaintiff and defendant are sometimes stated, forming an annual average of 11% per annum over the two decades. The percentage of causes over the period with both names and occupations given rose to nearly 30% in 1777. This was due to the form of citation used, the wording of which allowed the occupations of both parties to be included. This form still excluded details of any occupations of single or widowed women. (67) The use of occupations as identifiers of each party began to die out from 1782 onwards, with no information at all in 1787 and 1788.

This listing is given in full in Appendix 6.I and shows that most of the causes were between those of similar occupations or of similar social status. (68) Nine causes fit into this category, although the similarity of occupation may well conceal a wide range of affluence as well as status within trades or crafts. (69) Differentiation can be seen in

occasional references to 'master weavers' in the main data listing, as opposed to 'weaver'. The predominant users of the courts in this sample would appear to have been farmers, tradesmen and labourers and their wives. They often brought individuals from the lower levels of society to the courts as defendants, including hucksters, badgers, labourers, a cow jobber, and many tradesmen who had insulted their customers, particularly victuallers, where the role of alcohol may well have been important.

In growing urban areas, overcrowding could exacerbate social pressures. These pressures were considerable in Birmingham during this period, particularly from around 1786. (70) At this time the brightly polished buckles and buttons that had been in use for the previous century for fastening of shoes began to be superseded by the humble shoelace and the covered button. This displaced the complex working structure of the buckle trade, leaving many hundreds of workers unemployed. (71) By 1790-91 tensions reached a head and rioting broke out in Birmingham. If the theory of social tensions holds good, then one would expect the number of defamation causes in Birmingham to have risen significantly. The occupations involved in these disputes actually provide little evidence to show that the metalworkers, known to be under considerable stress at this time, were the main defendants.

The occupations of defendants given in these causes have been analysed for the period 1770-1789. These are listed under ten categories in Appendix 6.II. The number of individuals in each of these

categories has been counted and sorted into a percentage of the whole. A similar process has been carried out with a contemporary directory of Birmingham, that of Sketchley and Adams, dating from 1770. (72) The occupations listed in Sketchley and Adams were given in much greater detail than those from the courts, and often give dual occupations. Publicans are listed as a single occupation and as dual occupations with 42 other trades, including 'publican and button mould turner', 'publican and keeper of prison'. Most of the dual occupations include one related to either manufacturing or the food trade. It is interesting to note that gentry are not listed as such in the trade directory, no occupation being deemed necessary for such a station in life, although a number of gentlemen were known to be lawyers.

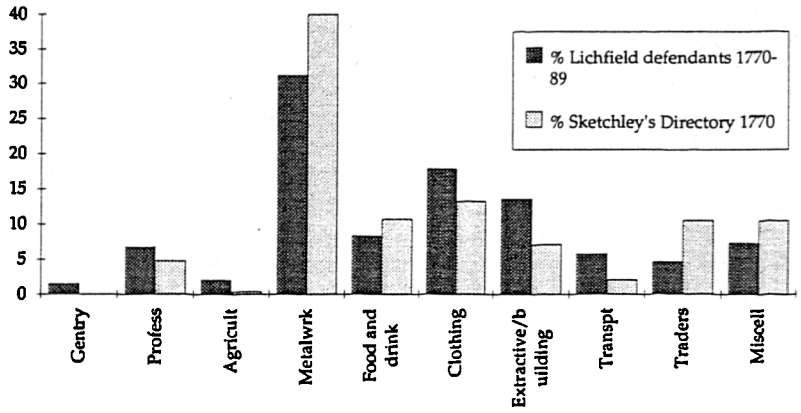

Fig. 6.8 Comparison between occupations of defendants in defamation causes, Lichfield Consistory court, 1770-1789, and occupations recorded in Sketchley and Adams' Birmingham Directory, 1770.

The correlation provides an initial set of information. The two groups of figures have been plotted on to a graph, Fig. 6.8, for comparison. This demonstrates a modest compatibility between the two groups of figures and suggests that those who appeared before the church courts were broadly representative of contemporary society. The Birmingham figures show a greater number of individuals employed in the metal trades, a wider range of food and drink occupations, traders, and miscellaneous occupations that could fit into several categories. (73) The Lichfield occupations tend to have a more rural bias in that the gentry and agriculture are more strongly represented. (74) Clothing, extractive/building trades, and transport were, in theory, more likely to employ individuals in rural areas, particularly weaving, framework knitting, mining, carpentry, brickmaking, and blacksmithing.

Apart from these general points, there are three features which stand out. These are firstly, the number of parties who dealt in alcohol, either as victuallers or innkeepers At least one such individual can be found in eleven years out of the twenty in the sample. Many of the causes themselves would appear to be 'alcohol-related' in spite of canonical reluctance to prosecute merely as a result of 'hot words'. These disputes usually occurred during the evening or late at night in alehouses, but the element of malice was always included in those libels which have survived. There were no defamation causes explicitly related to drunkenness in the Lichfield courts, as Sharpe has found at York. (75) If the background to these causes could be traced, it might be apparent that many plaintiffs were

suing because their licence to sell alcohol, and thus their livelihood, depended on maintaining their good names.

A second feature is the large number of parties from the lower or lower-middle social groups, including sawyers and a painter and the daughter of a labourer. Those of higher social status were a comparative rarity. In the sample, only two wives of gentlemen complained, one against a baker, the other against the wife of a cordwainer. Occasionally causes worked in social reverse, as when the wife of an innkeeper from Uttoxeter complained about language used by a gentleman.

Only four clergymen sued for defamation as instance causes, one - Kaye Mawer - in a suit that lasted for six years. The three remaining clergymen were involved with a yeoman, a farmer and a cordwainer and came from Clown (Derbyshire), Pentrich, a township in Ripley parish (Derbyshire) and Chilvers Coton (Warwickshire), all very rural parishes. (76) The clergy could in theory have sued the parishioner as an office promoted cause for using opprobrious words to the clergy.

c) 1810-1829, n = 106

By this period, the number of causes was reduced to a comparative trickle, the annual number reaching a maximum of only 9 in 1829. Between 1812 and 1816 there were between two and four per year, showing a remarkable falling away after the peak in 1780.

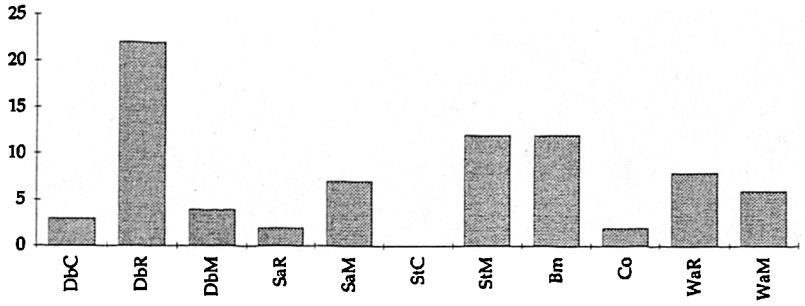

Fig. 6.9 Settlement origins of defamation disputes, Lichfield Consistory court 1810-1829.

KEY: DbC = Derby: DbR = Rural Derbyshire: DbM = Derbyshire market towns: SaC = Shrewsbury: SaR = Rural Shropshire: SaM = Shropshire market towns: StC = Stafford: StR = Rural Staffordshire: StM = Staffordshire market towns: Bm = Birmingham: Co = Coventry: WaR = Rural Warwickshire: WaM = Warwickshire market towns.

Causes from Staffordshire dominated the courts by this time, providing all of the causes in 1821 and 1823. Shropshire causes were

only represented in nine years of the sample. The spatial distribution of business may suggest reasons for their decline. Warwickshire causes continued to be dominated by Birmingham which provided all the plaintiffs in 1814, 1822, 1826 and 1828, but there were no causes from this county in six years of the twenty year sample. The urban and rural distribution of cause origins in Fig. 6.9 demonstrates continuing rural dominance of this form of dispute. The number of causes had fallen dramatically, particularly from Birmingham and Coventry, allowing the rural areas to dominate once more. In six years there were no causes from Warwickshire and in a further ten the causes all originated in Birmingham. There is no obvious explanation for this pattern. In only five years were both types of origin represented.

iv) Sexual permutations of disputes.

One of the most striking features of the Lichfield records is the high proportion of women involved in these courts, as plaintiffs, defendants and witnesses in all areas of business. Their predominance in defamation causes in other courts and periods has been a frequent source of comment by other historians. (77)

A simple gender analysis for the causes between 1700-19 is shown in Table 6.1 where causes are divided into four major categories, MvM, FvF, FvM and MvF. Causes involving male plaintiffs were

always small in number. The overwhelming impression is the high proportion of married female plaintiffs pursuing both men and other women.

This trend continued between 1770 and 1789. The number of male plaintiffs continued to fall, as shown in Table 6.2, rising only to 9 in 1786. The decline was in the MvF area. The proportion of female plaintiffs continues to dominate the pattern of the previous sample, increasing in FvF causes. The numbers of spinsters also increases, possibly related to the fact that the status of each plaintiff was specified in this period. The number of widows as plaintiffs continued to decline and they were not represented in three of the twenty years.

Table 6.1 Gender analysis of defamation causes, Lichfield Consistory court 1700-1719.

[1. Figures in brackets show the proportion of married women plaintiffs.

2. Proportion of the total number of causes.]

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	MvM	FvF	FvM	MvF	Totals
1700	4	18 (27.7%)[1]	30 (76.6%)	4	56
1701	5	11 (63.6%)	23 (65.2%)	1	40
1702	4	12 (50%)	19 (68.4%)	2	37
1703	5	14 (42.8%)	32 (59.3%)	1	52
1704	5	15 (26.6%)	25 (68%)	2	47
1705	3	8 (87.5%)	24 (79.1%)	4	39
1706	4	13 (46.1%)	13 (69.2%)	1	31
1707	6	17 (52.9%	12 (66.6%)	6	41
1708	0	1 (100%)	0	0	1
1709	6	17 (41.1%)	27 (62.9%)	5	55
1710	1	9 (66.6%)	12 (50%)	3	25
1711	0	2 (50%)	3 (33.3%)	0	5
1712	0	4 (75%)	1	0	5
1713	0	2 (50%)	1 (100%)	0	3
1714	3	3 (33.3%)	24 (45.8%)	5	35
1715	1	15 (66.6%)	19 (68.4%)	1	36
1716	0	11 (72%)	21 (71.4%)	0	34
1717	2	2 (50%)	11 (81.8%)	0	15
1718	3	6 (66.6%)	12 (66.6%)	2	23
1719	7	11 (45.4%)	24 (70.8%)	2	41
Totals	**59 (9.5%)[2]**	**191(30.7%)**	**333(53.6%)**	**39(6.2%)**	**622**

Between 1810 and 1829, the number of male plaintiffs fell to an average of one per year in eight of the twenty years. The status of female plaintiffs continued to show the dominance of married women who brought all the causes in six of the twenty years. Spinsters are not represented as plaintiffs in four years and widows are only present in three years of the sample. The cause papers consist predominantly of citations, which, whilst they continue to give details of plaintiff and defendant, tend not to proceed to libels. This implies a readiness to settle affairs quickly. Some penances survive in small numbers, even at this late date. The parties are still from the lower end of society, including bricklayers, colliers and labourers, although the occasional attorney or gentleman also appears.

Sharpe has shown that in the York courts the number of male plaintiffs dropped from 49% in the 1590s, to 24% by the 1690s, though he does not state the sex of the defendants. (78) The York courts actually saw an increase in the number of non-sexual defamation causes, whereas Lichfield very rarely heard anything but those implying sexual impropriety. Possibly the tightening of the general rules of the courts encouraged stricter definition of the words that could have been used in the midland dioceses of Lichfield, Gloucester and Worcester. (79) Males were usually described as 'whoremasters' at Lichfield, but there were very few perjurers, liars or usurers. The word 'whoremaster' would appear to have been used normally not in the sense of a pimp but of an individual who committed notorious fornication or adultery.

	MvM	FvF	FvM	MvF	Totals
1770	2	12 (58.3%)[1]	17 (82.3%)	1	32
1771	0	11(36.3%)	11 (81.8%)	0	22
1772	2	1	19 (63.1%)	0	22
1773	3	4 (75%)	8 (87.5%)	0	15
1774	0	23 (60.8%)	14 (42.8%)	1	38
1775	2	4 (50%)	14 (64.2%)	0	20
1776	2	18 (38.8%)	21 (80.9%)	1	41
1777	3	18 (66.6%)	18 (77.7%)	2	41
1778	3	33 (60.6%)	32 (68.7%)	1	69
1779	3	23 (56.5%)	43 (51.1%)	0	69
1780	3	25 (44%)	45 (55.5%)	2	76
1781	1	23 (56.5%)	31 (61.2%)	1	56
1782	4	17 (64.7%)	20 (60%)	0	41
1783	6	24 (58.3%)	14 (71.4%)	0	44
1784	4	7 (57.1%)	24 (62.5%)	1	36
1785	2	14 (64.2%)	12 (58.3%)	0	28
1786	7	15 (53.3%)	20 (65%)	2	44
1787	1	9 (66.6%)	18 (55.5%)	0	28
1788	1	4 (50%)	18 (50%)	0	23
1789	0	9 (55.5%)	13 (76.9%)	0	22
Totals	**49 (6.35%)[2]**	**294 (38.3%)**	**412 (53.7%)**	**12 (1.5%)**	**767**

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Table 6.2 Gender analysis of defamation causes, Lichfield Consistory court 1770-1789.

[1. Figures in brackets show the proportion of married women plaintiffs.

2. Proportion of the total number of causes.]

The volume of material from Lichfield permits a brief analysis of the male against male causes between 1770 and 1789, the numbers shown in Table 6.2. There were three years when there were no causes of this type. (80) In most years they formed less than 5%. They only rose to more than 15% of the total defamation causes in 1773. 1782 to 1786 saw an increase in the number of these causes but they would appear to have been falling throughout the eighteenth century, in line with the general pattern at York. There is evidence for fifty such causes, usually in the form of citations only. This would suggest that the declared intention to take an individual to court would often be sufficient incentive for the defendant to come to an informal agreement.

Though comparatively few of the defamation causes went as far as depositions, it would appear that many of these causes were relatively simple disputes. Few plaintiffs ever appeared more than once, and where they did, these disputes were usually continuations of causes in previous years. A handful of cases reveal far wider and more

complex disputes. In 1788 John Stubbing, a Chesterfield yeoman sued Robert Adlington of Calow, a carpenter; Robert was also being sued by Mary, wife of William Cock, while John himself was being sued by Ellen, wife of Joseph Webster, a farmer. (81) These suits were all for defamation but the evidence suggests a far more complex dispute in the background. John Stubbing had been sued by three people, seven years earlier, the same year that Mary Cock was in the same position. A check on the Office, testamentary, matrimonial and tithe business shows no other dispute involving these people, and their dispute may have been a civil one.

In some causes, a man appeared among a group of women suing a single individual, often as a relative of one of the other plaintiffs. In 1787, William Cooke of Nether Whittacre sued Charles Rotheram, farmer, as did Elizabeth Kendall, an unmarried servant. (82) John Allabone from Rugby sued Edward Bromwich, a cordwainer, in 1784, and at the same time his sister Sarah took the same action. (83) Other male against male causes might be concealed by a male accusing another man's wife of adultery.

v) Case studies

Defamation causes arose through an immensely wide range of circumstances, often revealed in the depositions of witnesses in those causes which reached that stage. The largest single group of causes featured married women plaintiffs suing male defendants. Some of

these originated in apparently sudden quarrels, while others were part of wider disputes between families. Sexual defamation was an easy and powerful way of injuring a male rival through his wife. In other causes male defamation appears to have been motivated by sexual jealousy, frustrated hopes and soured relationships. Not all of the causes were simple, and other motives were sometimes revealed as the cause progressed.

In a complex cause in 1713, Martha Bernard accused Jesse Okell, of Shrewsbury, of defamation, and took her case against him to the Court of Arches. (84) Martha had become involved with his son, Jesse Okell the younger and they had produced a bastard child. The older Jesse objected to the affair and was responsible for the defamatory words, probably in an attempt to undermine the relationship. One witness reported that Martha was the daughter of Walter Clapton, Esq., a 'worthy gentleman of a considerable estate'; and another stated that 'before she fell into the company of young Jesse Okell [Martha] was accounted a modest and vertuous woman, and is come of a very good family'. (85) The reactions of Martha's family, and her estranged husband, are not easy to determine. In a rare accusation of bribery another witness accused Jesse Okell the elder of trying to bribe a family to swear that Martha and young Jesse had slept together in their house. (86) Behind this apparently simple cause of defamation in the Lichfield courts, there lay a morass of litigation which spread through Shropshire and down into London.

In his study of Retford, Nottinghamshire, David Marcombe has shown that a number of those accused of fornication in the sixteenth and seventeenth centuries went on to marry other partners. (87) This may give a clue to some of the later Lichfield causes, where an earlier lover resented the marriage of his partner and sought to disrupt it or take revenge. When Thomas Barrett was accused of being 'nought' with Anne Glover, spinster, it appeared that another suitor, John Sadler, had been jealous of her impending marriage. (88) A quarrel about a dog that had worried sheep at Sow in 1715 resulted in Edward Eales saying of Hannah Hancox in the local alehouse, 'whore ... and you should have been myn'. They had obviously known each other some time and Edward felt that Hannah had made the wrong decision in marriage. (89)

One of the largest and most obscure defamation causes to be heard in the Lichfield consistory court was between Edward Owen and Jonathan Critchlow, begun in 1708. The cause ostensibly started with 'towntalk' about Jonathan's affair with Anne Orton, and was referred for adjudication in the Panyer, a coffee house in Coventry. This failed and the cause was then heard in the consistory court. Anne had been persuaded by a lawyer, Mr. Owen, to allow herself to be defamed on the understanding that Owen would bear all the charges, in spite of the 'ill consequences that might attend Anne owning herself to be a whore'. Owen apparently hoped to blackmail and disgrace Jonathan Critchlow, a political enemy. Anne later claimed that she knew 'no ill or incivility of him [Jonathan], but Mr. Owen persuaded me to swear to before Mr. Oadhams and I must now stand to it'. The fact that a

woman would confess to being a whore, with the collusion of her husband, is remarkable, and it was the only case of its kind in the Lichfield courts. (90) (Owen remained a family friend of the Ortons, being named sole executor of Robert's will, made in August 1710. (91))

C Changing patterns of defamation causes between the sixteenth and eighteenth centuries

i) The early modern period

The earliest courts studied, those of Canterbury in the medieval period (by Woodcock and Helmholz), fall well outside the scope of this work. The period immediately before and after the Reformation has been studied by Ralph Houlbrooke working on the courts of Norwich and Winchester between 1520 and 1570. (92) One of the earliest pieces of modern work on defamation was an article by Christopher Haigh on the Chester Courts from the mid to late sixteenth century. (93) Specific work on defamation in the early York courts has been carried out by J.A. Sharpe. (94) Defamation business also featured in the work of Martin Ingram whose work surveys the sexual business of the courts of the Salisbury diocese. (95) Laura Gowing's recent book on the London courts takes a specifically feminist viewpoint. (96)

Houlbrooke's work has shown that pre-Reformation defamation causes included accusations of secular as well as moral crimes. (97) Sexual insults came to the fore during and after the Reformation in Norwich and Winchester, although there were often other disputes in the background. Some of the earliest accusations were against women described as 'priest's whore'. The rising numbers of female plaintiffs were gradually overtaken by males by the end of the sixteenth century. This situation was mirrored in the contemporary York courts where there were almost equal numbers of male and female plaintiffs. A century later however, the number of male plaintifs in York had dropped to around 25%. In these courts, non-sexual slanders were still heard against men, but those against women were almost always sexual in character. (98) Ingram's sample from the Salisbury diocese found that male plaintiffs outnumbered females in a ratio of 6:4 in the second and third decades of the seventeenth century. (99) Work by Laura Gowing on the London courts between 1570 and 1640 has shown that here the plaintiffs were predominantly women - 85% - in an area of court business that formed 70% of the total. (100)

Four common threads can be discerned in the work on late sixteenth and early seventeenth century causes. First, there were very often other issues in the background. A high proportion of the litigants - 80% in the Salisbury diocese - were from the same parish, often neighbours. (101) In the Norwich and Winchester courts, defamation causes often resulted from property disputes and 'slighting behaviour'. (102) Sharpe found similarly that tithes, straying animals and disputed land rights often formed the background to defamation

causes in the York diocese. (103) He also cited work on the Chester courts by Christopher Haigh who suggested that defamation causes might represent attempts to head off presentments for immorality. This suggestion is also made by Ingram, who found links with other legal proceedings in 30% of the defamation causes in the Salisbury courts. (104) The London causes also often show other quarrels in the background. Gowing argues that the courts were often used as a means of resolving other disputes, although she also suggests that the proceedings of the church court fomented quarrels and created more work for itself. (105) In early modern London these disputes often related to the close intimacy of a densely populated city, particularly over property boundaries and water resources, definitions of personal defensible space and resource access. These might be expected to be male dominated areas of complaint, but they appear to have been the roots of predominantly female against female defamation complaints. Defamation incidents frequently appear to have been almost 'staged' in that they took place ostentatiously in public places. (106) There may in fact be a connection between these two points in that a boundary dispute may have required legal action in a civil court which would have been expensive and probably time consuming. (107) Perhaps it was cheaper to involve the church courts, using a defamation suit to try to force a speedy resolution.

The second common thread is the social status of the individuals involved. It is not possible to assess the status of plaintiffs from the evidence surviving in the Norwich and Winchester courts, but concern for reputation seems to have been common well down the social scale. The same conclusion was also drawn by Ingram from the

Salisbury diocese, where yeomen, husbandmen, craftsmen and servants were involved. (108) The upper levels of society would have used other means to settle disputes over reputation. The church courts seem to have been the recourse of the middle and lower-middle levels of society. The very lowest levels of society, including the very old, and the young, single and mobile, may have cared little about reputation, and would have lacked the money and 'know how' to pursue a cause.

The third thread concerns attitudes to the punishments meted out by the courts. Penance and excommunication were the only penalties that could be prescribed by the courts, and they seem to have been considered adequate by contemporaries. Houlbrooke endorsed the suggestion made by Helmholz that 'public vindication of reputation' was 'achieved more effectively by the use of public humiliation' than it would have been by money damages. (109) The use of solemn penance 'gave satisfaction to the congregation and cleansed the festering sore of local enmity'. (110) It is worth noting that in all areas many defamation causes seem to have been settled before reaching a sentence. Very few causes went all the way to sentence at Winchester and Norwich, though the figure was higher at Salisbury. (111) This would suggest that the use of the courts and the threat of penance was often sufficient to drive some alleged defamers to a private resolution of the dispute.

The final common thread relates to the volume and impact of defamation business. It is clear that the instance business of the

church courts played a significant role in 'neighbourhood discourse', though we should remember that such causes directly involved only a tiny percentage of the population. Gowing suggests that in the early years of the seventeenth century about 130 men and women came to the London court each year. (112) If this can be taken to include only plaintiffs and defendants, and a further 100 witnesses were called, the total number of households involved would still be in the region of only 230. This is a minute proportion of the total households of around 33,000 in London at that time. But over an adult lifetime a significant proportion of the population would have been involved with the courts. Each of these causes generated gossip and speculation, so that many more people in the local community would have been drawn into these disputes, supporting one side or the other. The most significant point about the numbers involved in the church courts is that they were well in excess of those in the courts of Assizes or Quarter Sessions. Where a defamation cause ended with public penance in the parish church, it involved the entire local population.

ii) The eighteenth century.

Little work has been done on the disciplinary or instance work of the church courts in the eighteenth century. Martin Ingram has suggested that 'by 1700 the spiritual jurisdiction was only a shadow of what it had been a few years earlier'. (113) Work on the later courts has

been inhibited to some extent by Barry Till's study of the eighteenth century York courts, in which he demonstrated that they had virtually ceased to operate by 1720. (114) Sharpe considered the decline of the York courts as 'one aspect of a more general decline in the popularity of the church courts' and suggested that defamation causes may have been heard in the common law courts for the rest of the century. (115)

Till's work showed a small number of defamation causes still passing through the York courts in the eighteenth century.

	1700-01	1727-28	1761-64	1775-76	1826-32
Def causes	58	32	51	27	31

Table 6.3. Numbers of defamation causes in the eighteenth and nineteenth century consistory court of York.

[No comparable figures available for the chancery court]

The limited work on courts during the eighteenth century offers fewer opportunities for comparison than in the early modern period. Till's work on the York courts extended to 1730, while Morris's earliest causes from Bath and Wells date from 1733, and Meldrum's study of London runs from 1700 to 1745. This temporal overlap between Meldrum's and Morris's work is too small to be significant.

Meldrum's work on the defamation business of the London Consistory between 1700 and 1745 suggests that this court too was entering a phase of decline, due, he suggests, to the cost of proceedings and their 'ineffectual penalties, particularly their ability to award cash damages'. (116) Ecclesiastical penalties may seem ineffectual to us, but they were still sought in other courts throughout the century. However, it is possible that the availability of penalties in civil courts and the privacy of negotiation through lawyers may have taken litigants away from the church courts.

Several general themes familiar from the early modern period surface again in the later period. Till described defamation disputes as 'back yard squabbles between members of the lower classes, usually women'. The strength of female plebeian involvement is once more noted by Meldrum and Morris. Meldrum goes so far as to say that the court was a tribunal 'administered for women' and that the predominance of women in the courts was 'both a symptom and a cause of the court's decline'. (117) The fact that women dominated defamation business is striking, but Meldrum gives no figures for other areas of court business. There is nothing in contemporary law books to suggest that church courts were ever regarded as the prerogative of women. It is hard to see gender imbalance as a major cause for their decline nationally, as women had already dominated defamation cases for well over a century - including a period which saw the dramatic increase in such litigation.

Morris's work on three courts in the Bath and Wells diocese between 1733 and 1850 examined the ways in which the definitions of male and female reputations differed. (118) Overall, the combined activities of these courts matched those of Lichfield between 1736 and 1769, but began to decline after this. Fig. 6.2 shows that by the 1770s the number of causes at Lichfield was far in excess of those at Bath and Wells. Morris found, as others have done, that the church courts survived as a result of a continuing need to settle disputes over honour between plebeian groups in society. Unfortunately, she did not put the defamation causes into the context of temporal changes or the full range of the courts' business. She saw the egalitarian attitudes and distinctive plebeian sexual culture of the early eighteenth century weakened and replaced by a more moralistic and authoritarian sexual culture in the mid nineteenth century. (119) Defamation causes had dwindled to between 2 and 12 a year by the 1830s, however, which hardly seems a sufficient number to reflect major changes in sexual culture. Morris also argues that the proctors of the nineteenth century courts had adopted the sexual ideology and double standard of the upper classes. (120) In fact, the proctors of all church courts followed existing and traditional procedures and were technically unable, and probably unwilling, to maintain an individual stance. These causes were heard by the official principal whose experience in legal practice was unlikely to be swayed by sexual ideology.

The number of causes in the Bath and Wells courts per year was comparatively small, ranging from 8 to 16 between 1770 and 1790 and 2 to 12 between 1822 and 1830. The number of witnesses was also very

small - only 40 witnesses deposed between 1733 and 1799. Each cause would demand a minimum of three witnesses, so this would represent a sample of ten causes or less. There were 44 depositions between 1800 and 1851, again representing the small number of causes that proceeded to this point. (121) This would appear to reflect the normal pattern, in which the vast majority of causes disappeared from the record at an early stage. The role of the courts in this diocese too, clearly, was generally to facilitate reconciliation.

Tim Meldrum's work on the eighteenth century London consistory court also suggests a process of decline. Defamation disputes in the capital were dealt with frequently by the quarter sessions and the use of recognisances. (122) He comments that penances 'were rare by the turn of the eighteenth century', and suggests that they were no longer taken seriously, quoting one example of penance being ridiculed. In fact on this occasion a fight had broken out in the church to prevent the penance being witnessed by the friends of the defamed, the defamer not wishing to be observed. (123) Public penance remained a highly charged occasion. The Chancellor of the diocese of Salisbury reported to the ecclesiastical commissioners in 1832 that he had 'some difficulty to preserve order' when a notorious individual was expected to do penance that day. (124) The evidence suggests that the appetite for seeing justice done in public remained strong and that contemporaries continued to find in public penance one satisfactory way to secure it.

iii) Lichfield causes in their temporal context.

The Lichfield evidence confirms the continuity of many of the findings of researchers on the earlier courts. Ecclesiastical courts were used by a broad cross-section of the community, though with fewer plaintiffs from the lowest social strata or the young. The pre-civil war pattern of a high number of married women plaintiffs continued after the Restoration, throughout the eighteenth century and down to 1830. The small and declining number of male plaintiffs noted by Sharpe at York is mirrored at Lichfield. (125) Men were more often abused using words which did not meet the highly specific criteria required for the church courts and were taken before the civil law courts or the local JP. It is worth noting however that the suits brought by married women were also of direct concern to their husbands. To call a married woman 'whore' was to cast a slur on her husband as a cuckold, which was far more humiliating and damaging than to call him an adulterer.

The falling away of defamation causes from 1780 probably signifies the beginning of the final, slow collapse of the Lichfield courts, in that this business formed the cornerstone of their non-compulsory instance work. This decline can possibly be explained in part by the transference of defamation business to civil law courts whose papers have not survived. Changing social attitudes may also have affected their decline. The earlier causes show individuals ready to defend their good names against insult through the courts, but by the end of the century this was seldom the case. There is no simple explanation

for this, though one fact may have been the declining role and authority of the Established Church in the lives of ordinary people, especially in the growing towns. Sharpe sees the decline in defamation causes after the 1720s at York as 'just one aspect of a more general decline in the popularity of the church courts'. (126) He posits the use of the civil law courts instead, implying that these causes must have continued using other channels, rather than simply stopped. The Lichfield material shows a very different picture with defamation causes peaking in the 1780s before the instance work of these courts started to decline. Morris suggests that one of the reasons for the decline of the courts of Bath and Wells was that 'propriety shielded the rich from the intimacies of the poor and where it did not, as in a defamation cause, which required judges and proctors to listen to repetitions of the sexual slander and to stand by as defamatory words were repeated before the victim in a form of penance, those exposed could be quick to express their disapproval'. (127) But there is very little hard evidence to support this view, and the rich had never formed more than a very small proportion of plaintiffs.

The decline in the defamation business of the courts can most probably be linked to the weakening of the role of the Established Church through the growth of Nonconformity, whose members maintained their own standards of behaviour, and the more general decline in church attendance in the eighteenth century. The rise of private negotiation through solicitors, and the growing use of JPs 'charging the peace', also played a part in the decline of defamation business.

This study of the Lichfield courts has however demonstrated the continuity of defamation causes at Lichfield, as at a number of other courts, until well into the nineteenth century. These causes would appear to represent the last phase of a face-to-face society in which honesty was represented by sexual behaviour. Individual case studies demonstrate the wide variety of circumstances in which these causes were generated.

It is very easy to regard these defamation causes as being comparatively insignificant in legal terms, but their social ramifications could be considerable. In the eighteenth century, as earlier, they were 'consumer-driven' rather than 'church led', for there was no legal necessity to bring them to court. The fact that so many causes 'disappeared' without trace has often been regarded, mistakenly, as a failure of the system. Analysis of the number of excommunications, absolutions and penances is misleading, for they relate only to those causes where some form of final corrective decision was involved. The causes that disappeared before reaching a conclusion, the great majority, should probably be seen, paradoxically, as evidence that the system was working successfully. Resort to the courts had prompted the parties involved to reach a settlement informally, restoring peace to the local community. The promise given by the Bishop at his enthronement was to restore Christian harmony by means of the correction of manners, and to impose spiritual punishment.

References:

1. Anon., The Whole Duty of Man (1715), p.249.

2. LJRO, B/C/5/1703: Defamation: Tamworth:Letter to Lady Littleton of Tamworth from Samuel Leigh.

3. The Whole Duty of Man, p.249.

4. Frontispiece to Bath-Intrigues: in four letters to a friend in London (1725). The quote attributed to Dr. Garth may refer to the work of Sir Samuel Garth, a medical doctor, prolific writer and wit. DNB VII, pp.910-911.

5. LJRO, B/C/5/1714/42:Testamentary:Philips and Winter.

6. LJRO, B/C/5/1714/103:Testamentary:Deposition of William Phillips of Bradley.

7. J.A. Sharpe, Sharpe, Defamation and sexual slander, pp.10,27; Laura Gowing, Domestic Dangers, p.61; Ingram, Church Courts, Sex and Marriage,p.302; and Tim Meldrum, 'A Women's Court in London: Defamation at the Bishop of London's Consistory Court, 1700-45', The London Journal 19 (1994), p.6.

8. LJRO, B/C/5/1707/Defamation:Burton upon Trent:Crown c Smith.

9. LJRO, B/C/5/1703/Defamation:Grandborough:Good c Grant.

10. Usually described as *'felo de se'* or theft of the self.

11. Ingram, Church Courts, Sex and Marriage, p.298. The area of this temporal jurisdiction covered only those parishes on the Isle of Ely itself, p.352.

12. The second highest number of cases in any group over the whole period was only eight.

13. OED references between 1645 and 1835.

14. Pers. comm. Bernard Capp.

15. R.H. Helmholz, ed., Select cases on defamation to 1600 (1985), p.xiv.

16. Helmholz, Select Causes, p.xxxiii.

17. Although the present tense was used in the eighteenth century.

18. Words spoken in the heat of the moment.

19. F.N. Rogers, A Practical Arrangement of Ecclesiastical Law (1840), p.297, quoting J. Ayliffe, *Parergon juris canonici anglicani*, (1726).

20. LJRO, B/C/5/1819/Defamation:Shenstone:Garratt c Smith.

21. Brawling here is used in the older, verbal, sense rather than physical fighting.

22. Homilies, p.134.

23. OED, 'Disposed to go counter to what is demanded or what is reasonable, perverse, difficult to deal with, hard to please, refractory, ungovernable'.

24. The Two books of Homilies appointed to be read in churches (Oxford, 1859), p.137.

25. Ibid., p.146.

26. See section on defamation and the civil law.

27. K.V. Thomas, 'The Double Standard', Journal of the History of Ideas, XX (1959).

28. T. Meldrum, Women's Courts, p.4. A fight broke out in church when the defamer tried to prevent his victim's witnesses attending his apology. In spite of his outward disrespect for the occasion, he was not willing to be seen in such a situation.

29. LJRO, B/C/5/1814/Defamation:Uttoxeter:Bill of costs: Smyth c Wylde.

30. LJRO, B/C/5/Owen c Critchlow

31. LJRO, B/C/5/1704/Defamation:Stafford, St. Mary:Grace Yarlett, spinster c Alice Pershall; letter.

32. LJRO, B/C/5/1814/Defamation:Uttoxeter:Smith c Wylde.

33. LJRO, B/C/5/1703/Defamation:Hartshorne:Robinson c Bostock and wife. Twenty one of the signatories were literate.

34. LJRO, B/C/5/1714:Defamation:Aston by Birmingham.

35. LJRO, B/C/5/1780:Defamation:Kingswinford:Dangerfield c Thomson.

36. LJRO, B/C/5/1779:Defamation:Birmingham:Prime c Lewis.

37. Domestic Dangers. Gowing sees these as being symbolic in their own right, p.18.

38. LJRO, B/C/5/1703/Defamation:Walsall:Mouseley c Leigh.

39. LJRO, B/C/5/1736/Defamation:Shrewsbury St. Chad:Gewin c Rogers.

40. LJRO, B/C/5/1735/Defamation:Derby:Lowe c Wright.

41. LJRO, B/C/5/1745/178:Steventon c Gough, deposition of John Sherwood, dated 9 Oct 1745.

42. LJRO, B/C/5/1715/Defamation:Shiffnal:Young c Horner.

43. LJRO, B/C/5/1704/Defamation:Pentrich:Rivington c Rhodes.

44. LJRO, B/C/5/1713/Defamation:Birmingham:Cotterel c Buck.

45. E.P. Thompson, Customs in Common (1991), Ch. 8 'Rough Music', pp.467,475.

46. The use of whoremaster as a man with a single whore, a man who could in fact have considered himself married to the woman with whom he lived. This was technically a mixed cause. In view of the fact that he had fathered two bastard children and there were no claims for bastardy, the church courts would have heard the cause.

47. LJRO, B/C/5/1724/Defamation:Loppington:Hales c Shingler.

48. LJRO, B/C/5/1716/Matrimonial:Roby c Roby.

49. LJRO, B/C/5/1719/Defamation:Wolstanton:Leake c Bayley.

50. LJRO, B/C/5/Immorality:Whitchurch:OD c Haines.

51. Morris used defamation causes from the Episcopal court of Bath and Wells, the episcopal court of Bath, and the archdeaconry court of Wells.

52. T. Meldrum, Women's Courts.

53. Morris, Defamation and sexual reputation, p.216.

54. Ibid., p.236.

55. Gowing, Domestic Dangers. Gowing quotes a population of between 326,000 and 380,000 in 1640. This figure was derived from a median figure of 33 causes per year, involving an average of 2 people, from a population of 350,000.

56. Schofield in R. Floud, and D. McCloskey, eds., The economic history of Britain since 1700, Vol. I 1700-1860 (2nd edition, 1994), p.88.

57. Stoke was a very large parish containing a number of townships during the eighteenth century whose individual development led to the development of a a number of smaller centres, which coalesced into a large town, rather than the expansion of a single settlement as in most English towns.

58. Floud and McCloskey, Economic History, p.89.

59. The clergy could have used the church courts to defend their own moral reputations, and indeed some did, but words spoken against them relating to their professional conduct would often have resulted in either an Office or office promoted cause.

60. Sketchley and Adams, Tradesman's True Guide and Universal Directory, reprinted as The Streets and Inhabitants of Birmingham in 1770.

61. Or at least the ability to sign their own names. Morris, 'Defamation and sexual reputation', p.356.

62. LJRO, B/C/5/1718/Defamation:Sutton Coldfield:Powell c Heyley.

63. LJRO, B/C/5/171713/Defamation:Tutbury:Mackrory c Powers.

64. Lambeth Palace Library, Court of Arches. Contempt of court, George Newell NP Proctor c William Walmisley, Vicar General of the diocese of Lichfield, 1708. Cause No. 6597.

65. LJRO, B/C/5/1707/Defamation:Market Drayton:Bate c Littleor.

66. LJRO, B/C/5/1716/Defamation:Birmingham:Taylor c Jones.

67. The earliest occupation given for a woman has been found in 1781, referring to a gauze weaver LJRO, B/C/5/1781/Defamation: Coventry:Brown c Branham.

68. For instance, the silkweavers from Coventry, and the surgeons from Wednesbury.

69. The description 'button-maker' could include a small independent worker or a large manufacturer employing a number of people.

70. J. Money, Experience and Identity, Birmingham and the W. Midlands 1760-1800 (1977), p.262.

71. Money, Experience and Identity, p.262.

72. Sketchley and Adams, Tradesman's True Guide.

73. Although that may be distorted by the inclusion of a large number of dual occupations associated with this group of activities.

74. It must be remembered that this chart only refers to occupations, which are limited in farming to yeoman, husbandman, labourer, and gardener.

75. Sharpe, Defamation and sexual slander, p.12.

76. LJRO, B/C/5/1773/Defamation:Pentrich:Mawer c Cooper. Rev. Kaye Mawer MA lived at Butterley Hall and John Cooper described himself as a yeoman. There were two further causes in 1777 and 1778.

77. For example, Sharpe, Defamation and sexual slander; Ingram, Church Courts, Sex and Marriage.

78. Sharpe, Defamation and sexual slander, p.28.

79. See Ch. 2. Probity of the Courts.

80. In 1771, 1774, and 1789.

81. LJRO, B/C/5/1788/Defamation:Chesterfield:Stubbing c Adlington.

82. LJRO, B/C/5/1787/Defamation:Nether Whittacre:Cooke c Rotheram, also Kendall c Rotheram.

83. LJRO, B/C/5/1784/Defamation:Rugby:Allabone c Bromwich, and Allabone c Bromwich.

84. Lambeth Palace Library, Court of Arches, Lambeth Palace Library, Court of Arches, Bernard c Okell, 1713. Cause No. 808.

85. LJRO, B/C/5/1713/Defamation:Shrewsbury:Depositions Anne Price and Griffith Evans.

86. The bribe offered was a payment of twenty guineas, an annuity for life.

87. D. Marcombe, English Small Town Life, Retford, 1520-1642 (1993), p.135. Family reconstitution has identified a number of those accused of incontinence as marrying different partners.

88. LJRO, B/C/5/1701/Defamation:Wombourn:Barrett c Sadler.

89. LJRO, B/C/5/1715/Defamation:Sowe:Hancox c Eales.

90. LJRO, B/C/5/1708/Defamation:Owen c Critchlow. Deposition of Anne Orton. Mr. Oadhams was probably a JP. Her attitude is slightly ambivalent in that she had agreed to allow herself to be called a whore and yet stood by her oath to a civil magistrate.

91. LJRO, B/C/11, Will of Robert Orton, 1710.

92. Norwich Record Office: Norwich Consistory Court, Act and deposition books and court papers.

93. C.A. Haigh, 'Slander and the church courts in the sixteenth century' Trans Lancashire and Cheshire Antiquarian Soc., 78 (1975).

94. Sharpe, Defamation and sexual slander.

95. Ingram, Church courts, Sex and Marriage.

96. Gowing, Domestic Dangers.

97. Houlbrooke, Church Courts and the People (1979), p.39.

98. Sharpe, Defamation and Sexual Slander, p.28.

99. Ingram, Church courts, Sex and Marriage, p.304.

100. Gowing, Domestic Dangers, p.12.

101. Ingram, Church Courts, Sex and Marriage, p.303.

102. Houlbrooke, Church Courts and the People, p.80.

103. Sharpe, Defamation and Sexual Slander, p.22.

104. Ingram, Church courts, Sex and Marriage, pp.303, 306, 308.

105. Gowing, Domestic Dangers, pp.22, 116-7, 134, 137.

106. Ibid., p.99.

107. The boundaries and resources in question may well have been owned by landlords who did not wish to take action on the part of their transient tenants.

108. Ingram, Church courts, Sex and Marriage, p.304.

109. Houlbrooke, Church Courts and the People, p.87.

110. Ibid., p. 263; The Guardian 4 Feb 1997 p.13, discussed public humiliation punishments now being enforced in the USA.

111. Houlbrooke, Church Courts and the People, p.82.

112. Gowing, Domestic Dangers, p.59.

113. Ingram, Church courts, Sex and Marriage, p.374.

114. B. Till, 'Administrative system'.

115. Sharpe, Defamation and Sexual Slander, p.27.

116. Meldrum, 'A women's court in London', p.5.

117. Till, 'Administrative system', p.82; Meldrum, 'A women's court in London', p.15; Morris, 'Defamation and sexual reputation', pp.214,237,371.

118. Morris, 'Defamation and sexual reputation', summary.

119. Ibid., p.243.

120. Ibid., p.372.

121. Ibid., p.356.

122. Meldrum, Women's Courts, p.4.

123. Ibid., p.15.

124. Commissioners, Report into practice and jurisdiction of ecclesiastical courts, 1832.

125. Sharpe, Defamation and Sexual Slander, p.28.

126. Ibid., p.27.

127. Morris, 'Defamation and sexual reputation', p.17.

CHAPTER SEVEN : TESTAMENTARY BUSINESS

The Deponent exhorted him [John Philips] as a Minister to Settle his affairs in the world and not to leave his effects in confusion which might be the cause of great quarrels and law suites after his death or to this purpose and thereupon the said John told the Deponent over and over that he had made no will nor would he make any but that he would leave what he had amongst his relations as the law should dispose it, further saying they may as well take it without a will as with one.

Deposition of John Peploe of Stallington, 1714. (1)

Introduction

This deposition gives the impression of an intransigent old man simply being stubborn, refusing to recognise the common sense of making a will. The fact that John Philips' affairs generated a series of some 69 documents at Lichfield alone between 1714 and 1718, supports Peploe's exhortations. Another deposition reveals that Philips was in considerable pain, due to an enormous rupture, and that he had already made a will some years earlier. (2) None the less Peploe was perfectly correct in stating that effects left in confusion would lead to 'great quarrels and law suites', as the volume of testamentary business in the Lichfield courts demonstrates. Analysis of the testamentary business of any consistory court in the eighteenth century is *terra nova.* (3) Causes reached the courts when formal mechanisms were found essential to resolve testamentary problems within the family or community, or when disputes raised significant legal issues. The wide range of testamentary business that came before the consistory court related to two broad areas, causes involving the validity of the will

itself, and those relating to the financial processes of winding up the estate.

This chapter examines the volume of testamentary causes which passed through the Lichfield consistory court in the eighteenth century, using the three sample periods adopted previously, to determine changes in the use of the court. The disputed estates will be analysed in terms of the social status of the testators, the settlement origins of the causes, and the relationship between creditors and legatees as plaintiffs. Five sample causes will be examined in detail to investigate the types of questions that could be brought before the court, and the types of problem that arose in the eighteenth century.

A. Wills, the administration of estates and eighteenth century disputes

i) Will making in the eighteenth century

The details of the minutiae of will-making in the eighteenth century demonstrate the vulnerability of the procedures to possible abuse. Will-making was usually undertaken in a domestic setting. In spite of the presence of an increasing number of lawyers in many towns and rural areas, many wills were drawn up at home, and some were published in the bedchamber itself. A typical scenario would involve an individual, often ill or elderly, deciding to undertake the task and sending a servant to the house of a literate neighbour, occasionally a relation, the local parson, or sometimes even a lawyer, to take down the outline of the will. The draft would then be either

copied out in the best handwriting of the listener, or taken to a lawyer for ingrossing. (4) If the testator was sufficiently literate, the will would simply have been written down in a holographic form. (5) On completion of the will, the document would be signed, sealed and published in front of witnesses. This involved the dropping of hot wax on the bottom of the written sheet, the impression of this with a seal of some kind and the verbal pronouncement by the testator in front of witnesses, that this was his (or her) last will and testament. It was of legal importance that those present had to be aware that a will was being made and that the testator was 'of sound mind'. Testator and witnesses then signed the document and it was either kept by the testator, or given to relatives, a trusted friend or a neighbour to retain. On the death of the testator, the possibilities for the destruction of the will by relatives disappointed with its contents were considerable, particularly if the witnesses had died or moved away. It was also possible, with a little skill, to alter a will, particularly one that had been made some years before death, to add codicils, or even to forge a complete document. (6) If the individual died without making a will, they were described as intestate and their affairs were dealt with by one or more administrators, approved by the probate courts.

Most wills named individuals to act as executors of the estate and even an overseer to ensure that the testator's final wishes were carried out. (7) In some wills the executors were not identified by name, simply by their relationship to the deceased. In such cases probate was granted to those administrators presumably intended by the testator, 'with will attached'.

The procedure of will-making was predominantly a male one, although female servants often acted as witnesses. Married women were not allowed by law to make wills in their own right until 1883, although they could do so with the approval of their husbands. It is interesting to note that occasionally, the affairs of the wife of an individual would be disputed. These causes would result from the wife acting as administratrix or executrix, usually for a member of her family, and dying prior to the winding up of the estate. By taking the cause through the consistory court, it would be possible to assign another person to administer the previous estate, usually the widower of the administratrix/executrix. A widow was entitled to make her own will and these, like any other such document where problems arose, were disputed in the courts.

ii) The grant of probate

Probate itself, granting legal permission to 'intermeddle' with the goods of the deceased, still had to pass through the church courts in the eighteenth century, by way of the probate courts, whose sole business this was. This process was described as 'proving the will'. (8) Individuals responsible for unadministered probates in the Lichfield diocese who were slow to start the administration process were called to appear before the probate courts which were held in the diocese twice a year in the eighteenth century. Where an individual had moved a note was made for them to be sought for in the appropriate parish. (9) If they still failed to carry out their duties they could be called to answer for their inaction before the consistory court at Lichfield. This facility, coupled with Letters of Request between dioceses ensured that most probates were eventually administered.

The actual grant of probate was very rarely disputed, and then only on the grounds of evidence to demonstrate that the probate had either been granted in the wrong diocese, or to the wrong individual. This involved the probate being revoked by the authorities. This has been found to arise on comparatively few occasions at Lichfield between 1700 and 1830. One feature of the diocesan administration at Lichfield was the well-maintained Registry which housed the wills proved in the probate courts, which, later in the century, received a constant stream of enquiries relating to wills proved in the Lichfield diocese. The Registry also the housed the records of the consistory court, both Court Books and cause papers, as well as the administrative documents.

iii) The testamentary business of the consistory courts

A small sample of 1213 probates from the surviving eighteenth century Warwickshire probate court books show a ratio of around 2:1 between testate and intestate estates. (10) A high proportion of these were granted at the bi-annual probate courts held at Coventry and Coleshill.

If a will had been made, then the instructions were reasonably plain. The scope for arguments over the contents of wills and the manner in which the affairs of the dead were transacted was by contrast immense. It is no coincidence that one volume, out of a total of four, of Burn's Ecclesiastical Law (11) was devoted to wills and their problems. (12) Testamentary causes formed one of the largest categories of business of the Lichfield courts in the eighteenth century,

up to half of the entire court business in some years. It is impossible to assess how many other arguments were settled out of court either by lawyers or by the use of arbitrators, or even simple negotiation within the family. (13) This was one of the two compulsory areas of the business of the courts. Here again, the consistory court business may be the tip of a very large ill-defined iceberg, from which only the most complex or intractable causes came to court, as has been noted in other types of court business. The most important constraint on its activities was that it could not enforce payment of monies owed. The task of the courts was to ensure that the Bishop's moral obligation to members of his flock was fulfilled. Having looked after their souls in life, he had an obligation to ensure that their last wishes were carried out.

The use of the specialist probate courts was obligatory for the initial grant of probate, and the consistory courts were used extensively for the settling of testamentary disputes heard as instance causes. (14) These disputes included the proving of wills in both simple and solemn form (15) where the sanity of the testator was in doubt, or where procedures had not been followed satisfactorily, disputed nuncupative wills, later additions to wills and codicils, suppression of wills, renunciations of probate, rash administration of estates, (16) claims for unpaid legacies, claims for unpaid tithes, disputed inventories and accounts, and the assigning of guardians to minors who were entitled to legacies. (17) In cases of intestacy the witnesses to the death of the individual, or those who knew them, were also important, to ensure that no nuncupative will had been ignored. (18) The consistory court was one of the only methods of dealing with these problems that were technically outside the remit of solicitors and the common law.

Testamentary business was usually heard in plenary form, the full form of law, as instance causes, and was thus relatively expensive as a result of the necessity to produce those who had witnessed a will where the validity of the document was in doubt. The proving of the validity of a will for a second time in the consistory court was done either in common form or, more frequently, in solemn form. Problems relating to the proving of a will, or the division of legacies led to inter-family problems, which again may have spread further into the community, or have presented particular legal problems if left unsettled.

Academic work on the testamentary element of the church court business has tended to concentrate on individual components from the church courts, notably probate accounts, and especially inventories, up to 1750. (19) Margaret Spufford's recent work on the probate inventory demonstrates however, that the document itself provides little or no information on the debts of the deceased, which might be extensive. (20) The value of an estate may have been very much less than the amount shown on the inventory, and not enough to meet the bequests made in the will. This deficit would generate litigation. The imbalance is sometimes revealed in the probate accounts which were occasionally presented to the courts. (21) Historians have used these sources to investigate wider social and economic issues. (22) Placing these probate inventories and accounts in the context of other court material enables us to trace their origins in various types of disputes.

The statutory requirements for the production of probate accounts were clarified in 1685 when it was enacted that the accounts of

intestate estates were only required 'at the Instance and Prosecutions of some Person or Persons in behalfe of a minor haveing a demand out of such Personal Estate, as a Creditor, or next of Kin ...'. (23) Thus they ceased to be produced in the probate courts and then appear, in very much reduced numbers in the consistory court. The reasons for the chancellor or his surrogate requesting a probate account are not given in most of the Lichfield causes, and cannot always be deduced from the surviving evidence. (24) They relate to a series of five administrative problems. First, the rash administration of an estate, second, cases where a nuncupative will had been made with insufficient reserves to pay the legacies; third, where there was any doubt as to the validity of the will; and fourth, where there were doubts as the value of the inventory, both the inventory and the probate account had to be presented to the court. Finally, in those cases where there were accusations of the subtraction of legacies, there was a need to demonstrate that there was no money left in the estate. This could arise as a result of debts left by the testator, the management of the estate, or the raising of children over a number of years.

iv) The main areas of dispute in the Lichfield consistory court

The wide range of testamentary causes can be grouped into seven broad categories, relating to the two elements involved. These were the testator and the legality of the will-making process and secondly, the executors and their work.

A proportion of the initial citations issued from the Lichfield registry in the eighteenth century were simply calling individuals into court to accept or refuse probate, and start the process of winding up the estate. Such individuals would probably have been cited to appear at the probate courts, or the archdeacon's visitation courts, prior to their eventual citation to appear before the consistory court if the process of probate had not been started. The longer this process was deferred, the more intractable the legal problems would become. Witnesses, executors and administrators could die before the affairs of the deceased were wound up. Under these circumstances, the affairs of the original estate had to be separated from those of the executor or administrator, and a new one appointed to continue the work. The estates where difficulties were experienced with tracing members of the family were often those of elderly bachelors or spinsters. In those cases where relatives could not be traced or were unwilling to undertake the work, the option to wind up the estate would be offered to creditors.

The most obvious claim against the executors or administrators of an estate was the validity of the will itself, which could be questioned on two counts, the state of mind of the testator and the process of will-making. When doubts were raised as to the validity of a will after probate had been granted, on either of these two counts, then it was necessary to prove the will again - in common or solemn form.

The second area of complaint revolved around the financial administration of the estate which required the production of inventories and accounts. This was an important element in the business of the courts, which would suggest that there were doubts on

the matter in many cases, although fraudulent (25) and rash administration were comparatively rarely cited in this diocese as the origin of disputes. (26) Subtraction of a legacy was a common form of complaint, which would require an explanation before the consistory court.

The seven main types of cause heard in the consistory court will be discussed invidually and can be divided into two main areas. These were as follows:

a) Wills and administrations:
   - i) Acceptance or refusal of probate
   - ii) Renunciation of probate
   - iii) Proving a will in common or solemn form to establish its legal validity.

b) The administration of the estate:
   - i) Rash or fraudulent administration
   - ii) Providing an inventory and account
   - iii) Subtraction of legacy
   - iv) Guardianship of minors and miscellaneous causes.

a) Wills and administrations

i) Acceptance or refusal of probate

Many of these causes were brought by creditors of the deceased, either individuals as principal creditors or in groups of two, seldom more. The defendants were often the widows and children and, if they would not undertake to do the task, creditors sought to do it for them. In those cases where no one could be found to undertake the administration of the estates of those whose families were not forthcoming, advertisements were made locally for creditors or those with an interest in the estate to come forward, by the use of citations to be read in church or, in the later part of the period, through local newspapers. These cases usually involved elderly bachelors or spinsters, boarding in lodging houses in urban areas.

ii) Renunciation of probate

Occasionally the executors nominated by the deceased would refuse to undertake their duties for various reasons, if only through a knowledge of the state of the deceased's affairs. This would require the executor to formally renounce probate which would require a cause in the consistory court to make a second grant of probate, in other words, to prove the will again in order to identify new executors or administrators. This process would have been carried out in the consistory court in the Lichfield diocese, when another individual

would be assigned to carry out the task, (27) and the necessary legal act recorded in the Court Book. (28)

iii) Proving a will in common or solemn form to establish its legal validity

Where there was any doubt as to the validity of the document it had to be subjected to proof in solemn form whereby the original witnesses were examined in court on the process of making the will. This validity could be questioned on three counts. The first related to the actual piece of paper itself - whether there was any evidence of forgery, erasure or interlining, and the replacement of information. (29) If the original witnesses had since died, their signatures could sometimes be verified by the matching of their signatures or marks against other documents.

The second hinged on the possibility that the testator had not been of sound mind when the will was made. A will made by a lunatic was not valid and many wills were questioned when the testator had had some form of stroke, palsy or injury, as well as being under the influence of alcohol. (30) The sole concern of the courts was that the testator should have been of sound mind and capable of rational acts when the will was signed, sealed and published. The onset of insanity at a later date did not invalidate the will, as is clear from a curious cause in 1791:

'NOTICE is hereby given,

That since the making of the before-mentioned Will, the said Testator, Thomas Coton became so very insane and disturbed in his Mind, as not be able to conduct his Worldly Affairs, or do any serious or rational Act in Law, or of taking Care of himself and Property .....' (31)

His unusual behaviour included running about in the street totally naked and terrorising passers by, which led 11 of his neighbours to witness to his insanity. His behaviour was such that his removal to a secure place became necessary, and he was subsequently sent to the asylum at Bilston, following medical and statements from two doctors. (32) In spite of such behaviour, his will was perfectly valid as it had been made prior to his insanity, which was therefore of little concern to the proctors of the ecclesiastical courts. The question of sanity in suicide cases was usually resolved when the coroner reported that the individual had been 'distracted' only at the time of death. There was a hidden agenda here in that if the deceased had been insane at the time of making his will the estate would have been forfeit to the Crown. Once a coroner's verdict declared the insanity to have been a temporary phenomenon the estate could then have been administered by the appropriate individuals. A handful of cases of suicide were dealt with through the courts and the will was usually upheld. (33)

Third, an action might arise where there was any suggestion of pressure being placed upon the testator. Such pressure could take the form of possibly overt coercion, as in the case of Charles Holland (discussed below, pp.385-87), a minor who left legacies to his less than

immediate family. (34) Other causes investigated included those where the ability of the testator to hold a pen and write their name, or make their mark, was in doubt and where such a situation could be exploited to the advantage of an unscrupulous individual.

Nuncupative wills were not a common form of will-making by the eighteenth century, but their settlement required the intervention of the consistory courts. If the will had been written down within six days of the speaking of the will, then it could be proved up to six months later. Probate of such will had to be delayed until it had first been offered to the widow or next of kin to act as executor, if they so wished. (35)

Finally, proof in solemn form would be required where there were suspicions of collusion between witnesses relating to the circumstances of the testator at the time of his death. Other types of cause included the subtraction of legacies, often due to the lack of cash in the account, or the death of the administrator or executor of the estate, rather than malicious motives. Causes involving multiple wills were comparatively few, due to the fact that the law would only recognise the most recent document, the signing of which would automatically negate previous ones.

b) Administration of the estate

This process comprised several stages - making an inventory, and obtaining the effects of the deceased. The assets having been collected, the debts of the deceased had to be paid. Legacies were then

paid and the residue of the estate distributed. Where an intestate's estate was administered the statutes of distribution came into force. (36) These required the administrator to divide the residue of the estate according to strict rules, by the customs of each individual diocese. The work of the executor or administrator could be challenged at any stage of the process.

i) Rash and fraudulent administration

The rash administration of estates were also sources of contention. This was the technical term used to describe the interference with the effects of the deceased prior to the granting of probate, as opposed to fraudulent administration which would refer to the actual process of winding-up the estate after the grant of probate.

ii) Inventory and account

It was also necessary on occasions, particularly when the quality of the administration of an estate was in doubt, for an inventory and account to be brought before the court. Inventories too could be the subject of separate disputes, in terms of items omitted or undervalued. This process has led to the production of inventories and accounts, at the request of the legatees, creditors or next of kin, which have been retained in the Lichfield cause papers where the management of estates was contested. These documents continued to be exhibited at the request of creditors and next of kin in the consistory courts through the eighteenth century into the nineteenth century. (37)

iii) Subtraction of a legacy

This type of business is self-evident. Legatees simply took the executor or administrator to the consistory court to explain why their legacy was not forthcoming. These causes were often fought by guardians on behalf of their charges who would, by virtue of their age, have been unable to act for themselves. Legatees could only demand payment as a moral duty on the part of the executor/administrator.

iv) Guardianship of minors and miscellaneous causes

One group of causes related to those under the age of 21, both as testators and legatees. The church courts were entitled to appoint guardians for minors, and act on their behalf in courts to ensure that legacies were paid in their due time - such monies were usually to be received on the attainment of majority of the legatee. These appointments required an act of court, usually 'had, sped and done', together with the necessary proxies, signed by the guardian. These assignments of guardians usually took place in the house of the proctor concerned, on a non court day, occasionally Saturday mornings. Many of the causes fought by guardians on behalf of their charges were simply trying to ensure that their charges obtained their dues from the parental estates.

The deliberate suppression of a will was comparatively rare at Lichfield. These can seldom have come to light where a small number of individuals were involved, but, when discovered, was a serious offence against the wishes of the deceased.

B The Lichfield Courts

i) Volume of business, 1700-1830

The proportion of testamentary business in the Lichfield courts was high, when compared with data from earlier periods, but the extent of this business in other eighteenth century courts has yet to be established. Ingram cites testamentary business forming 20.6% of the causes in Salisbury Consistory court in 1566. (38) This was the third largest category of business after defamation (26.4%) and tithes (22.9%). It corresponds well with the figures that Houlbrooke cites for the testamentary litigation (both instance and office promoted causes) in the Norwich consistory court for intermittent years between 1561 and 1569 as follows: (39)

Year	Norwich causes	% of Total	Salisbury %
1561	103	28.9	
1562	50	15.1	
1563	39	12.1	
1566	-	-	20.6
1567	47	21.1	
1568	53	16.6	
1569	54	18.7	

Table 7.1 Proportion of sixteenth century testamentary business in the Norwich consistory and the Wiltshire archdeaconry courts of the diocese of Salisbury.

Amy Erickson suggests that testamentary business formed a very small part of litigation in the church courts between 1580 and 1720, and she quotes Ingram's figure of 18 causes per year, which was in fact 20.6% of the business of the court in question. (40) The testamentary business of the Lichfield courts is shown on Fig. 7.1a-c. in three sample periods between 1700-1830, as a proportion of the total business of the courts.

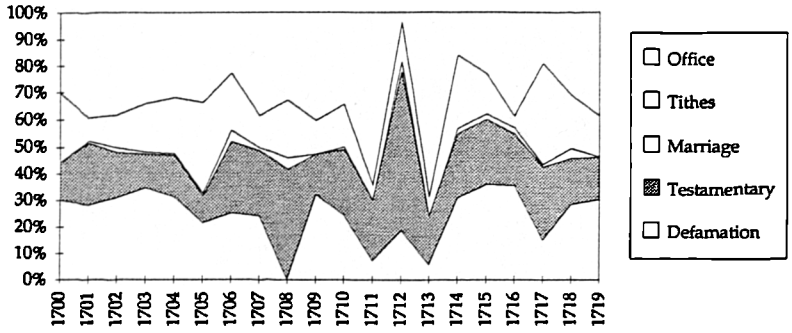

Fig. 7.1a Proportion of testamentary business in the Lichfield Consistory court, 1700-1719.

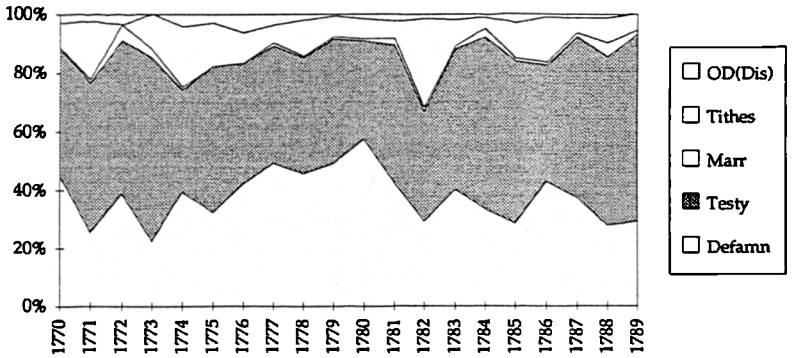

Fig. 7.1b Proportion of testamentary business in the Lichfield Consistory court, 1770-1789.

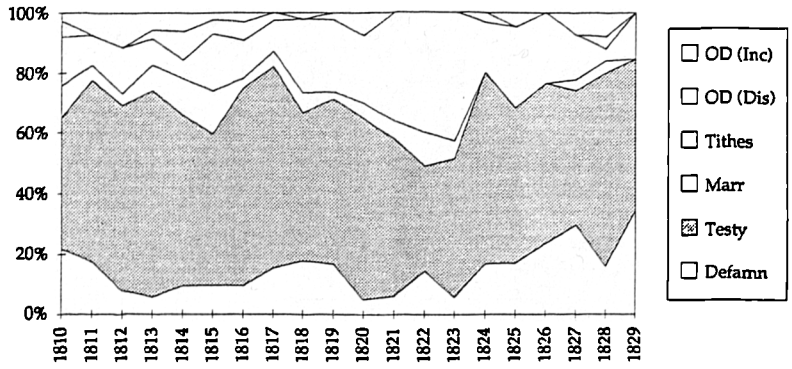

Fig. 7.1c Proportion of testamentary business in the Lichfield Consistory court, 1810-1829.

The number of testamentary causes passing through the Lichfield courts grew from 463 between 1700 and 1719 to 891 between 1770 and 1789. This figure fell back to 401 between 1810 and 1829. This produced an average of 23 causes per year in 1700-1719, 44.5 between 1770-89 and 20 per year in 1810-1829. Although the absolute figures are low compared with the mid sixteenth century figures from Norwich quoted by Houlbrooke, these earlier figures may well include citations for the production of accounts which were necessary before 1685. (41)

The proportion of the total business at Lichfield was low - 15% of the courts' work, which was maintained around this level for the first two decades of the century. By 1770-1789, the proportion of testamentary causes in relation to the total business of the courts had risen to around 40% and in 1790 formed 50% of the total causes. The proportion fell back to around 40% in the first decade of the nineteenth century and was recovering again to 50% by 1830. The reasons for the falling away of business during the latter period have not yet been fully explained, but may well relate to a combination of the economic

conditions of the period and the structural population changes of the late eighteenth century. Certainly the legal costs had not risen.

Fig. 7.2a-c shows the proportion of male and female testators whose affairs were disputed. The number of female testators was small and usually represented one or two widows per year, with one spinster in each of nine years, suggesting a very high proportion of marriages at this time.

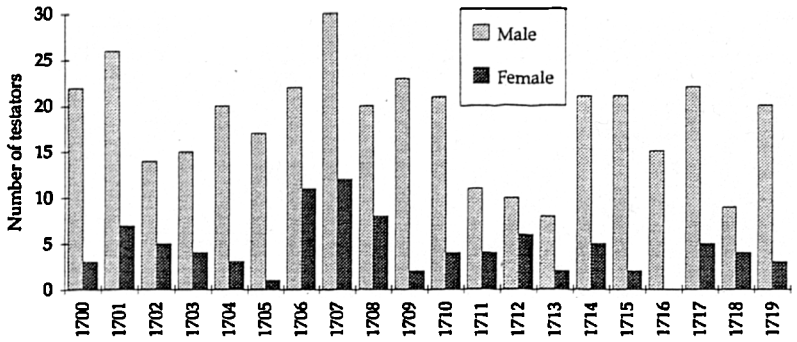

Fig. 7.2a Numbers of disputed estates of male and female testators, Lichfield Consistory court, 1700-1719

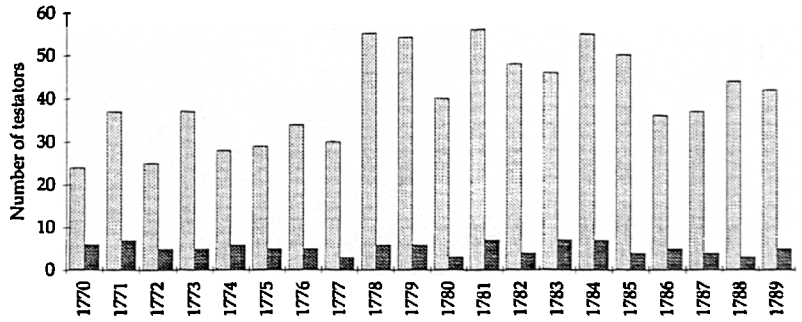

Fig. 7.2b Numbers of disputed estates of male and female testators, Lichfield Consistory court, 1770-1789

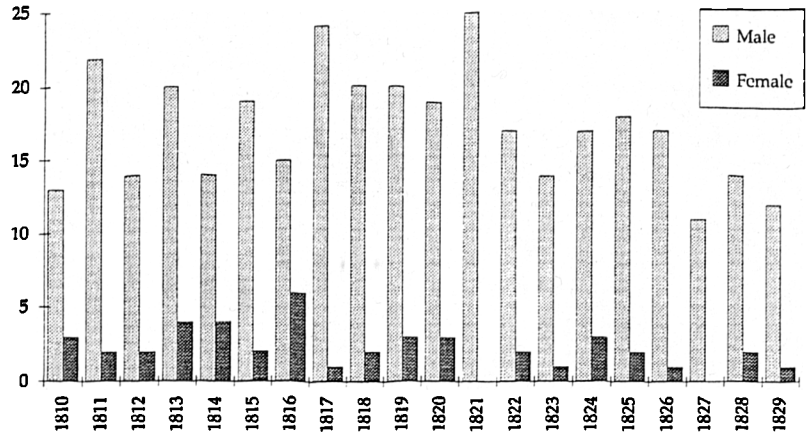

Fig. 7.2c Numbers of disputed estates of male and female testators, Lichfield Consistory court, 1810-1829

The highest proportion of female estates are recorded from this period, peaking at 11 female estates in 1706, followed by 12 in 1707, which formed 33% and 28% of the causes respectively in those years. These fell away by the 1770s, and there were none in 1821 and 1827. The average numbers remained remarkably static at around 4-5 per year in the first period, 5 per year in the second and dropped to 2-4 per year in the nineteenth century. These causes resulted very often from a lack of local relatives in the case of unmarried undividuals. The migration of sons and daughters away from their surviving parent also played a role in the management of widows' estates. In the nineteenth century sample, it was becoming necessary to advertise in Aris's Birmingham Gazette to trace the relatives or creditors of some women. Very occasionally, the estates of married women were brought into the Consistory court. These related to women who had died whilst in the process of acting as executrices or administrices.

ii) Spatial and settlement origins of causes

a) Spatial origins

These causes tended to be dominated by those from Staffordshire in 1700-19, rising to 60% in 1702, and over 70% in 1709. Warwickshire causes rose to 50% in 1705 and 40% in 1715. Causes from Derbyshire peaked at just over 50% in 1708, whilst the most heard from Shropshire comprised 25% of the total in 1716. The distribution of business during this period shows a very variable pattern, with no suggestion of allocation of court time to various areas. The variations between number of causes per county becomes less erratic in 1770-89. Warwickshire causes were fairly stable around 40%, with the exception of 1773, when they rose to 60%. Staffordshire causes took up about 30% of the court's time, rising to 50% in 1777. Derbyshire causes were stable at between 15% and 30%. Shropshire again provided the smallest amount of business, ranging from 2% to just over 30% in 1775. By the early nineteenth century, the pattern stabilised from around 1813 at an average of 50% causes from Staffordshire, 25-30% from Warwickshire, 10-45% from Derbyshire and a maximum of 20% from Shropshire, with no causes from this county at all in 1813, 1822, 1824-5 and 1829. The reasons for this are unclear. The area of the county in the diocese was not large and population density may have been lower than that of Warwickshire. The value of estates may also have been lower, which would generate fewer disputes.

b) Settlement origins

The settlement origins of testamentary causes from the average of the three sample periods are possibly significant.

	1700-09	1770-89	1810-29	Average
County towns	7.3	4.5	3.2	5%
Market towns	24.4	18.7	22.3	21.8%
Rural parishes	61.3	54.1	61.5	58.9%
B'ham/Coventry	3.8	21.6	13.3	12.9%

Table. 7.2 Settlement origins of testamentary causes in the Lichfield Consistory courts, three sample periods.

The growth of the population of Birmingham and Coventry during the century probably accounts for a considerable increase in that proportion of the court business between 1770-89 at the expense of the county and market towns in particular. The unmistakable dominance of the rural parishes is absolute through the entire century, and echoes Carlson's thesis that these courts functioned at their best in 'face-to-face communities'. (42) The movement of the rural population into the newer towns may well have encouraged them to take their attitudes towards the courts with them for a short period of time, this being reflected in the volume of causes from both Birmingham and Coventry.

One of the most surprising elements is the lack of causes from the market towns of the diocese. The ecclesiastical administrative structure of these towns was such that neither Shrewsbury nor Stafford

was entirely under the Bishop's jurisdiction, both containing peculiars with their own courts. The court of the Royal Peculiar of St. Mary in Shrewsbury was entitled to hold both probate and normal ecclesiastical courts and may have taken business away from the Lichfield courts. Even so, county towns would have been the type of settlement in which lawyers would have been able to set up their offices, with a sufficiently large clientele to guarantee them a living.

iii) The clientele of the Lichfield courts

The wealth and social status of the clientele of the Lichfield courts was to some extent predictable. Wills made by those of greater wealth and higher status were usually proved in the Prerogative Courts of either Canterbury or York. The poorer members of society would have had little to leave, and seldom wrote wills. As would be expected, the occupations of those involved in testamentary causes in the ecclesiastical courts show that the middling and lower ranks of society were their chief customers. Defendants in these causes were acting as executors and administrators of the estates of the deceased, and were often their relatives. Executors would of course be named by the testator in the will but administrators had to apply to the probate court for permission to act in this capacity, and a bond was sometimes required to enable this work to proceed, by guaranteeing the honesty of the administrators. These people were often the next of kin to the deceased who had failed to leave a will or name an executor, or creditors with a claim on the estate. Plaintiffs were often also family members, legatees of the estate claiming their just dues.

The occupations given in the early sample are slightly more numerous than those given in defamation and office causes, due to the diplomatic of the citation used in testamentary business. Other occupations were traced as a result of this appearing on inventories and accounts. Occupations of the deceased were given in 13.6% (63 cases) of the total. Of these, 16 related to gentlemen, esquires and armigers and 14 to yeomen. The remainder included 5 clerks, 5 husbandmen and a range of tradesmen. The largest sample from the later eighteenth century included a very wide range of testators, but the smallest proportion was that of female testators.

These causes usually involved very small family groups, as well as creditors of the deceased. The plaintiffs were many and varied. Children, siblings, parents, widows, residuary legatees and creditors all brought causes against executors and administrators. The latter included both members of the family and outsiders. The problems of categorising this type of cause are considerable. The most important factor is the number of women involved in these proceedings, not only in the roles of administratrices and executrices but as plaintiffs. The number of female testators was always low, due to the fact that married women could not make wills, but where disputes arose they were treated in exactly the same way as male testators.

Another avenue of research in this area has been directed to the study of women in the seventeenth century. Erickson has examined the probate accounts and the status of widows in the early modern period, and her work would suggest that widows formed the highest proportion of executors and administrators of wills passing through the probate courts at that time. (43) Analysis of executors' accounts

from the disputed testamentary business of the Lichfield consistory court for 1700-1709 and 1780-89 would suggest that the administrators and executors were seldom widows, which would suggest that those estates that had been settled by widows seldom gave rise to problems. The disputed accounts which passed through the court revolved around those estates that had run into negative figures, which would superficially present intractable problems for the executors or administrators. However, in areas of testamentary business not involving accounts, widows formed a slightly increased proportion of defendants through the century.

By the early nineteenth century, farmers, gentlemen, victuallers and yeomen dominated the business, although metalworkers, rural tradesmen and the occasional exotic occupation appeared in the form of American merchant, basket maker and a sett maker. Towards the end of the century creditors appear less frequently as claimants, whereas relatives become more important in their claims. Sometimes family members or friends were elected to act as guardians of the interests of children during their minority, until they were of age to inherit their portion of the estate. These people were often the next of kin to those deceased who had failed to leave a will or name an executor, or where creditors had a claim on the estate. Consequently most of the causes passing through the Lichfield consistory courts represented family disputes, with the degree of acrimony often varying in proportion to the perceived value of monies withheld. The complexity of family relationships and marriage patterns means that it is not always possible to determine the extent of family involvement merely from the surnames given in the citations. The Philips c Winter cause (discussed below) illustrates the complexity of some of

these relationships. Many causes involved first cousins, and both men and women who had remarried.

Three sample decades were used for a more detailed analysis of testamentary business. These were 1700-1709, 1777-1786 and 1820-1829. During these three decades, a total of 911 testamentary causes were heard in the Lichfield courts. (44)

The values of the disputed estates were very wide, as shown in Table 7.3, and have been taken from the inventories produced during each respective period. (45) The value of estates increased over time.

Year	No. of inventories	Max. value	Min. value
1700-09	50	£1014.16.07	£01.09.00
1777-86	96	£2296.08.10	£04.18.02
1820-29	49	£6613.17.08	£13.02.09

Table 7.3 Numbers and values of inventories in the three sample decades, Lichfield consistory court.

Figure 7.3 shows the changing pattern of values of estates disputed in the Lichfield courts. The early period sees a predominance of estates worth less than £100, with only 3 estates valued at more than £600. By the 1770s the predominant range was of estates worth less than £200, but with six estates worth more than £1000, probably reflecting the profits of enclosure and industrialisation. By the 1820s the spread of values was still greater. The old pattern of a dominance of estates worth less than £200 was still present but with a wider spread of values peaking at over £6600.

Examination of the probate accounts shows that in a high proportion of these causes, the value of the estate was in fact a negative one, and to complete their administration would have been a long, complex, occasionally expensive task and one to be avoided. The negative balances seem to have declined only slowly over the century.

Year	No. of accounts	Negative balance
1700-09	27	18 (66%)
1777-86	57	29 (50%)
1820-29	40	19 (47%)

Table 7.4 Numbers and values of probate accounts and those with negative balances in the three sample decades, Lichfield Consistory court.

The analysis of this data is complicated by the fact that both plaintiffs and defendants are identified both by their relationship to the deceased and their legal role in the cause. This can make comparison of data very difficult and reduces the truly comparable material to the identification of executors and administrators, legatees and creditors. Even this is not truly comparable in that, for some causes, it is only possible to identify one of the parties. The remainder of the plaintiffs and defendants are described by legal or relational identification, sometimes both. The analysis of the numbers of male and female plaintiffs can be justified on the grounds that it provides comparative material with defamation causes, where female plaintiffs dominated this voluntary element of court business. The situation is further complicated by the presence of incomplete cause papers, some only

being represented by correspondence. Letters of Request from other dioceses, affidavits of debt, papers referring to the transfer of causes to the Court of Chancery, together with inventories and accounts produced at the request of the court give little information about the type of cause involved.

The use of legal terms cannot be used with precision to identify the types of cause where documents are missing. Legatees suing executors or administrators were not always suing directly for their legacies, they were sometimes questioning the validity of the will.

Creditors were one of the largest identifiable groups using the courts, though, not to claim their money directly, for this was not the function of the ecclesiastical courts. Creditors were pushing executors or administrators to perform their moral duty and begin the probate process by accepting or refusing the administration of the estate in which both parties had an interest. In these circumstances, the citations were worded to encourage the relatives to do this by suggesting that if they did not respond, then the creditors would be offered the opportunity to administer the estate. (46) Fig. 7.3 demonstrates the importance of the role of creditors and legatees in the business of the courts, and shows how in many years, the creditors actually outnumbered legatees.

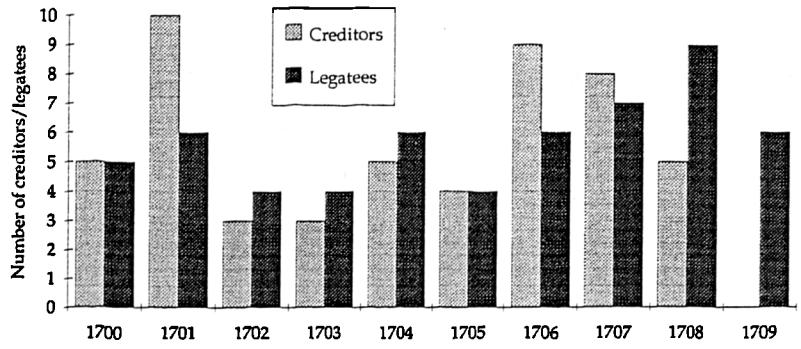

Fig. 7.3a Numbers of creditors and legatees as plaintiffs in testamentary business, Lichfield Consistory court, 1700-1709.

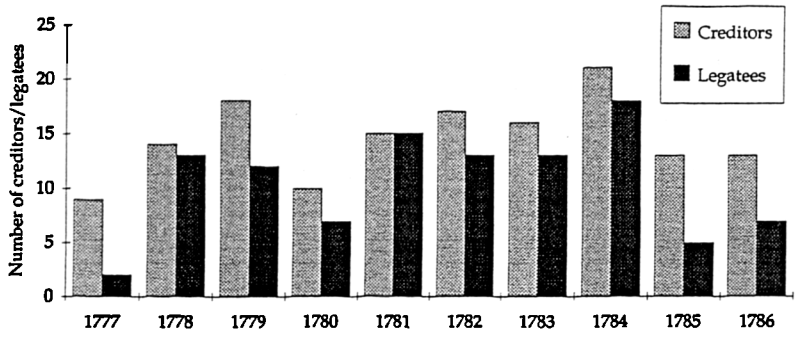

Fig. 7.3b Numbers of creditors and legatees as plaintiffs in testamentary business, Lichfield Consistory court, 1777-1786.

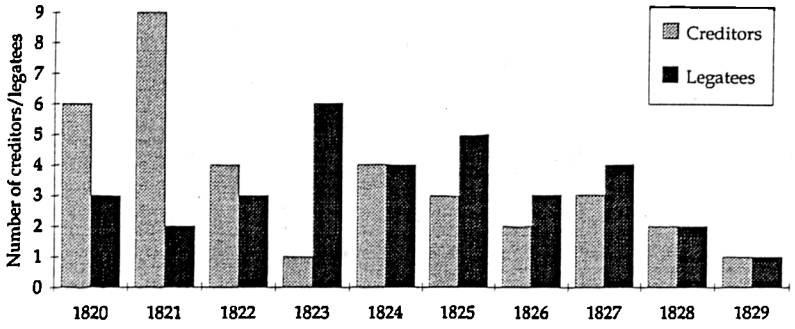

Fig. 7.3c Numbers of creditors and legatees as plaintiffs in testamentary business, Lichfield Consistory court, 1820-1829.

The majority of the causes passing through the Lichfield courts in the sample periods related to the validity of the wills and the assignment of individuals to undertake the administration of estates at the behest of the creditors.

Kinship networks are difficult to delineate quantitatively. Citations usually only give the name of one plaintiff, when in fact they may represent a larger group interest. One example of this can be seen in the cause of Cox c Cox (discussed below, pp.390-394), where Hugh Cox was anxious to prove the will in favour of his own family members. Most causes relate to persons of the contemporary or immediately following generation, with comparatively few causes involving the parents of the deceased, or the grandchildren (acting by their guardians), which is understandable at a time when life expectancy was comparatively short. The estates of married men were wound up by their widows, acting as executrices or administratrices, more often alone than with another party. Many causes simply involved two or three members of the family. Investigation of the huge number of people involved in the Phillips and Winter cause

discussed below only revealed two nephews of the deceased coming to the courts as next of kin of the elderly batchelor. (See Appendix 7.I)

iv) Examples of causes from the Lichfield courts

Five causes have been selected to illustrate the type of problems that were brought to the courts for resolution. One involved the estate of a widow and the remaining four involved the estates of unmarried males. These causes give a broad picture of the clientele of the courts and their social background, as well as the legal issues that were discussed.

a) The disputed will of a widow, Anne Adrian, 1718

The first cause concerns the disputed will of Anne Adrian, a widow of Bedworth in Warwickshire, who died in 1718. Her surviving inventory gives little information as to her social background, but her possessions were worth £53. 0s. 6d in a house containing four rooms (two on the ground floor and two above), together with a bakehouse and a dairy. (47) The names of the legatees in her will suggest that she had been married possibly three times, but there is no evidence as to the occupation of any of her husbands. (48) Of her five children, two received only a shilling each. This may not have been a malicious gesture in any way, simply a note of their existence, their share of their father's estate having been passed to them at the appropriate time. The two main beneficiaries were both sons from her final marriage. One received her house and land and the other acted as sole executor and inherited the remainder of the estate. The cause was brought against the sole executor by Anne

Friswell, a daughter by a previous marriage, who only received a shilling in the will; her mother had the forethought to point out in her will that Anne had already received money and goods following her marriage. Neither of her brothers had complained about the division of the estate.

This will was one of the 'home made' variety, involving a widow, a schoolmaster, a tanner and an old farmer. Technically, the will should not have been allowed to stand, the correct procedures of will-making having been flouted. The will had neither been read over to the testator in front of witnesses, nor was it initially published in their presence. However, the claim was more vexatious than valid, all the previous children having received some settlement from their father's estate, and the will was allowed to stand.

b) Potential coercion of a minor, Charles Holland, 1814

The problems of bastard or orphan children were reflected in the case of Charles Holland. Though testators under the age of majority were rare, canon law provided for boys over the age of 14 to make a will. (49) This fact was obviously unknown to Charles Holland, a japanner of Birmingham, whose will was questioned in 1814 by his brother and sister. The will itself had been made three years earlier when Charles was about eighteen or nineteen years old. Isaiah Holland, a japanner, approached Thomas Tyndall of Birmingham, an attorney, and enquired whether Charles was of a suitable age to make his will. Charles seemed very anxious to dispose of his personal estate in the correct manner. We are not told the circumstances of his living with Isaiah, who described himself as Charles's cousin. Certainly his

father had died, because Charles' personal estate consisted of a third share of his father's effects. He was very anxious that these should be given to Isaiah, rather than to his siblings - a brother and sister who visited him on occasions 'to get what they could from him'. In a situation such as this, when the testator was under age and living with an individual to whom he ostensibly wished to bequeath his belongings, there could be strong suspicions of foul play or, at the very least, coercion. Suspicion was enhanced in this cause by three facts: first, the will included a legacy to Isaiah's sister Sarah Holland for thirty pounds; second, Charles was described as being in a 'declining state of health'; and third, a fair copy of the will was prepared with considerable speed and delivered to Charles that same afternoon. The will was read over to Charles, who was given the usual opportunity to make any corrections deemed necessary. Tyndall then insisted that the obligatory witnesses be brought in, and Paul Gardner who lived nearby was brought in. The interrogatories included questions relating to the fact that no-one else was privy to the drafting of the will by Isaiah, or knew where the deceased was when the instructions were given to Isaiah. The question of coercion was obviously raised but Tyndall felt that all was well between the parties and that Charles was happy with the will that had been prepared and swore that Isaiah had not 'exercised influence over the deceased and does swear that no fraud contrivance or imposition was practised or used, or had been used by the Producent in obtaining the said Will as the Respondent knew or ever heard of.' (50) Paul Gardner, the second witness to the will, was a victualler and neighbour of the Hollands. When he entered the parlour in Holland's house, Charles was sitting in a chair, and confirmed that he was 'of sound and disposing mind memory and understanding, and perfectly capable of making his Will or of doing

any such Serious or rational Act'. However, Paul had not heard the will read over to Charles, or seen his reaction to it, nor did he sign his name as a witness in the presence of Charles. Paul also confirmed that Charles was mentally perfectly capable of signing his will but that 'he seemed very ill in his bodily health', and also stated that 'he has not heard and does not know that the Producent exercised influence over the deceased and does swear that no fraud contrivance or impositions had been used by the Producent (Isaiah) in obtaining the said Will'. He also stated that 'at the time of the execution of the will, the deceased was not in a weak and debilitated state and insensible of what he was doing, but appeared to this Respondent to be perfectly sensible of what he was doing'. (50) It is impossible to assess this cause in terms of the reasoning behind the actions of those concerned, but the court was obviously concerned about the possiblity of coercion. It was anxious to ascertain that all the legal requirements of will-making had been observed, particularly the reading over of the will to the testator who had to be seen to be of sound mind and to agree with the contents of the document. In fact, they do not seem to have been carried out accurately, but the use of a civil lawyer by the defendant probably added weight to his evidence. The verdict in this cause is unknown, and matters may have been settled out of court.

c) The disputed estate of a wealthy bachelor, 1714

A very complex and protracted cause involving an unmarried male, Philips c Winter, was heard in the consistory court between 1714 and 1718. This unusual cause brought a great many witnesses to court, all of whose occupations were stated, and it is thus possible to establish

in great detail the social circle of the relatives of an elderly tailor in the second decade of the eighteenth century. John Philips had been an apprentice and then a journeyman under William Winter's father. He had lodged in the Winters' house in Stafford in all for '50 or 60 years', 'for all which time the said John was kept and maintained with meate, drink washing and lodging suitable for him without paying any thing for the same'. (52) Mary Peploe mentioned that William held some land that John had purchased 'of small value', and what was presented in court as a generous and charitable arrangment obviously had a financial footing. John had lived for about 20 years with William Winter, prior to William's marriage in 1712 or 1713, when the newlyweds moved in to the house next door, but the 'house was under the same roof'. (53) John had never married and 'by his industry and frugal way of living had acquired in that service a handsome competence for his support and maintenance, that when and so often as the said John disposed of any money either at interest, or otherwise, the said Mr. Winter was first consulted thereon'. (54) As a frugal and industrious bachelor known for putting money out to interest, he must have acquired a local reputation as a relatively wealthy man.

John Philips' lack of a wife or very close family must have left his estate doubly vulnerable to possible exploitation after his death. He was obviously not unaware of this, because he made a will in 1705 on the 1st June. He took the will (written down by Mr Winter, and of which he (John) approved) to the house of his near neighbour, William Bagnall, an alehouse keeper and an intimate acquaintance. The will was then signed, sealed and published in correct legal form in the presence of William Bagnall senior and Thomas Lycett of Warlton in Staffs. Unfortunately, both of the witnesses predeceased John,

William by 12 months and Thomas by six years. William's signature was verified on the will by comparison with his signature on a bond for £8 and Thomas' by witness. John's death brought forth a claim from his nephew Thomas Winter, a baker who lived in London. Thomas claimed to be in possession of a Deed of Gift from John, giving him all his goods, together with three letters which he claimed were from John. It was stated that the Deed of Gift had been taken from London to Stafford by William Blackshaw, a London butcher, for signature by John, and then returned to Thomas. Unfortunately, Blackshaw's account of his travels and the signing of the Deed were flawed, amongst other details, by the fact that John was actually dead on the date that he claimed to have been with him for the signature. An interlocutory decree was produced verifying the signatures on the will and thus proving it. (55) The matter of the Deed of Gift was technically a civil one, although the cause continued through the consistory court at Lichfield. Although it cannot be proved, the seriousness of the affair must have been such that some action was necessary to deter others from attempting a similar course. John had obviously not been such a wealthy man as had been thought in the town; the original inventory was valued at £226.01.09 in January 1716, revised upwards to £232.17.03 in the following July. The final verdict from the Court of Arches on 8 March, 1719, would suggest that 'right had prevailed'. (56) Thomas had failed to prove his claim to the estate and was declared excommunicate, and ordered to pay costs taxed at £40 within six months. (57) He had, in fact, escaped lightly. Two bills of costs from his escapade in the Court of Arches survive, one dated 9 December 1718, totalled £38-02-08 and taxed at £20. (58) Presumably this bill had been paid when the next bill for £77-11-04 was drawn up on the 18th March, 1719, and taxed for the sentence. (59)

The family were basically tradesmen, although William Winter's niece married a clergyman. Three of the eight members of the family involved in the cause were definitely literate, all of them male. The literacy of the remainder was unstated, but probably not always lacking. The evidence for literacy comes from the ability of witnesses to sign a deposition and several individuals did not act in that capacity. The most literate group were of course the lawyers, who were also the wealthiest, Paul Smith of Stafford claiming to have an estate of £4-5000. These lawyers were all civil lawyers brought in as attorneys by the various parties, and were in no way related to the court proctors. (60) The friends, enemies and others involved in the cause were around 27 in number, of which eleven were literate. Six claimed illiteracy, three males and three females. The age of the males ranged from 44 to 70 and that of the females from 17 to 30. Again, a number of tradesmen were represented, but also a number of victuallers, husbandmen and yeomen. Those who quoted the value of their estates gave figures of £300 to £400, debts paid. The only exceptions were Thomas Bagnall, a butcher, and William Bagnall, a barber, whose estates were only worth £100 each.

The final appeal to the Court of Arches involved the transmission of 739 pages of text, albeit written as if the 'words were afraid of each other' at no small expense to the parties involved.

d) Two wills of a suicide, Benjamin Cox, 1707

A simpler cause involving two wills produced by an individual whose sanity was in question was Cox c Cox, in which the will of

Benjamin Cox, husbandman, was exhibited in the consistory court in 1707. Many causes of this type dealt with wills made by those who had suffered strokes or the palsy, rather than those with mental illness in the twentieth century sense. However, Benjamin was a bachelor and for several months before making the wills he was 'out of order and inclind to Melancholy, had Physick proper for his indisposition and administered to him before the making of the said will'. He would appear to have lived with his brother William at Portly House in the parish of Clifton Campville in the east of Staffordshire. (61) There may have been some local gossip about the treatment meted out to him, because in his personal answers William said that 'only and upon his the sd Benjamin's once refusing to take the medicines provided for him had a Stroake or two given him with a Cord over the Shoulders to make him take it'. (62) Benjamin's behaviour had possibly been difficult for some time. Richard Smith, William's apprentice in husbandry, said that the testator had been 'as wel in his senses as ever the deponent knew him to be in all the time the deponent had lived in the house with him which was above six years'. (63)

In the spring of 1707 Benjamin went to visit his other brother, Hugh at nearby Whittington and stayed for several days, during which time he signed, sealed and published his will, on 5 April 1707. The will was neatly written and witnessed by Alice Cox, Sarah Newbold and John Neal. The accounts of the witnesses would suggest that the legal procedures used had been correct. Alice, wife of Hugh, aged 61, had known the Cox brothers for thirty years, and gave her husband's occupation as a labourer. Her evidence stated that when Benjamin visited them at the beginning of April he had suggested that he would like to make his will. John Neal, a gentleman in the town, was fetched

by Joyce Cox, (Hugh's daughter) and he took notes of Benjamin's will. (64) The notes were read to him and, as it was too late in the evening to ingross the will, the document was brought back the following morning and read over to Benjamin. (65) This will was signed, sealed and published by Benjamin who made his mark, which was then witnessed. Alice claimed to have remembered 'the contents whereof as to the Legacies therein given', and added her mark as a witness. Sara Newbold, a 58 year old widowed neighbour, was called in to witness the publishing of the will. She was not happy about doing so, because she 'did not understand business of that sort', but was persuaded to add her mark as a witness. She stated that Benjamin was of sound mind and memory', and covered herself with the proviso, 'so far as the deponent was or is able to Judge'. This will nominated Hugh as executor to administer an estate worth in excess of £70.01.00 and provide 15 legacies, all amongst the Cox family siblings, four brothers and one sister. Six of the legacies however were to members of Hugh's own family. (66) Another legacy was to Benjamin's natural son, Ezechiel, who was to be put to a trade, before being cut off with a shilling. The child's mother, Mary Piercival, lived as a servant in William's house.

On his return to William's house, Benjamin attempted to cut his own throat and drown himself, possibly in the river Tame. He was rescued from the river and brought home to bed where he recovered quickly. He then made another will on 15 April, William claiming that he was dissatisfied with the earlier one. This was again made in a domestic setting but without the presence of a lawyer. Once again, the witnesses were anxious to state that Benjamin appeared to have been quite sensible in his behaviour. The will was witnessed by Joseph

Simmons the elder, his son and Richard Smith, William's apprentice, both of whom made depositions relating to the making of the will. Joseph Simmons jun., husbandman, aged 20, told William that whilst he could not actually make the will he was willing to take down Benjamin's wishes. William agreed to this and Richard, Joseph and William found Benjamin sitting in the house place. Benjamin requested that William should be made his sole executor and that Ezekiel should have £4 to set him to a trade, and £1 upon completion of his apprenticeship. Richard Cox, his other brother was to receive £18 and Joyce Cox £5, with the residue of the estate going to William, 'if anything were left'. The requests were then read over to Benjamin who gave his approval and made his mark, as did the witnesses and also Mary Pierceval. Benjamin was described again as being of sound mind and memory, although 'dull and heavy as he had been for about two months before'. (67) The document was offered to Benjamin to keep but he asked William to take it to Tamworth for it to be drawn up properly. About a week later, the Simmons' were again requested to witness the sealing and publishing of the final will. The document was produced with the wax already dropped on the bottom and an inkhorn top in place for Benjamin to remove prior to signing the will. Benjamin's mark was distinctive in the form of a circle with a 'speck' in it. Joseph jun. did not remember hearing the will read over, but William testified that it had been done, although the testator himself was illiterate. The interrogatories picked up on this point as well as the fact that no one else had been present when William gave the instructions to Mr. Baynton, an attorney in Tamworth. Benjamin also failed to 'declare or publish it for his will'. Joseph also stated that 'he could not perceive that the testator was melancholy' at any time.

Joseph's father, also Joseph, a 60 year old yeoman from Hogshill, also gave his description of the making of the will. (68) He further endorsed Benjamin's suitable state of mind by pointing out that when Joseph (sen) suggested that Richard Cox should be a joint executor, Benjamin refused. His account of the events tallies with that of his son, although he mentioned that Richard Smith was present, but not Mary Pierceval.

Benjamin finally hanged himself at the beginning of the corn harvest later that summer on Saturday 19 July. The coroner's verdict was that he was 'distracted' (69) although local gossip suggested that he had done it 'for fear of being pressd for a souldier'. (70) There is no sentence in this cause, and the final agreement must have been reached outside the consistory court. The second will must have been upheld because it is now amongst the wills in the Lichfield probate registry. (71) In spite of the lack of correct legal procedures in the making of the second will, when compared with the first, Benjamin's mark on the first will did not contain the speck that made the mark his own. The second will in the registry, whose list of legacies begin with his concern for Ezekiel's welfare, was signed by Benjamin, and on this occasion the mark contained the necessary speck in the circle. This demonstrates a degree of thoroughness and observation on the part of the court proctors in terms of right prevailing. The timing of the cause also demonstrates the often remarkable efficiency of these courts, Benjamin died in July, and by October the last witnesses had been examined.

e) Problems of guardianship, the embezzlement of the estate of George Needham, 1777

The fourth cause demonstrates the problems faced by a guardian who had to question the management of an estate to protect the interests of his charges. The estate in question was that of George Needham of Derby, a silk throwster, who died intestate in 1777. The value of an estate could be severely reduced by simple methods and this cause reveals details of the types of fraud that might be perpetrated by an unscrupulous administrator or executor. Robert Tunaly, George's son-in-law and guardian of George and Mary Tunaly, George's grandchildren, took Joseph Needham, his brother in law and administrator of the estate, to court to claim the distributive share for his charges. (72) The administrator's inventory and account, together with the plaintiff's allegation survive and it is possible to unravel some of the problems. Robert Tunaly listed a series of errors in the inventory and account, following the contemporary legal practice of an individual pursuing those who had done him wrong. Two major strands of error stand out - the omission of items from the inventory and the tampering with the account itself. Items in an inventory could be either under-valued, partially listed or totally omitted. The items in an account could be subject to a similar type of treatment, in that debts could include partial payment of the administrator or executor's personal debts, in a form that could be described as 'covered payments'. Occasionally examples can be found of the total payment of the administrator or executor's own debts in the name of the deceased. This type of manipulation would be most easily covered where the creditors were common to both parties and often involved

debtors sharing the same family name. Such fraud could only be discovered by an interested party with access either to the account books of the deceased, or good local knowledge, and a good relationship with the creditors of the deceased.

The extent of Joseph Needham's embezzlement was considerable. The inventory of George Needham was valued at £248.01.00 and Joseph's expenses amounted to £301.08.04, leaving the account £53.07.04 in debt. This debt would have had to be paid by Joseph Needham his son and administrator, who was thus informally declaring his father to have been insolvent. However, the extent of his embezzlement meant that this comparatively small cost would have been easily covered. Robert's work on George's books and his knowledge of the household led to a list of 15 items (73) having been omitted in addition to the total of 53 in the inventory. (74) Some of these omissions were minor, but others were very large. The remaining years on a lease of two properties in Bridgate in Derby were not included, and were worth an estimated £50. The malt and silk mills with their equipment, horses and asses were also serious omissions, valued at £112. The quantities of other items had been underestimated, particularly malt and barley. A debt of £26 had been paid but not accounted for on the inventory, and the payment of £2.16.0 received for tools did not coincide with the £3.12.0 actually received for them. Partial omission of goods included the hangings, blankets and coverlids from George's bed. The household linen had been totally omitted, amounting to £13. The numbers of each type of item were suspiciously rounded to ten (twice), twelve and six. (75)

Robert's work would imply that he had access to the accounts of George, and also to other accounts. He had obviously discussed the settlement of the estate with the creditors to assess the accuracy of the account. Thirty-one items on the account had been tampered with in some way, leaving a further 66 that appeared to be normal, usually by claiming that debts were those of George, rather than those of his son Joseph. Another method of deception included the splitting of debts, whereby the administrator claimed slightly larger debts than were due from the estate, by tucking his own bills into the amount claimed. According to the allegation made by Robert, one creditor had been paid before George died. A further six bills were not due from the deceased, and another six were due from Joseph himself. £28.02.06 due to three silk merchants 'for deficiencies of silk' were incorrect in that all three creditors were in fact debtors to the estate, the various sums of money involved being received by Joseph. (76)

The phrase that bills of account had been 'negotiated, exchanged and discounted' reinforces the concept of negotiation playing an ever-present part in both social and financial life of the period, although in this case the process involved a certain amount of alcohol. Robert also alleged that Joseph had paid £40 to Anne Flack, his sister, but had not made any reference to this in the account. If Robert's figures were correct, then the total value of the inventory should have been £709.05.00, instead of the value of £248.01.00 originally proposed, which would have left sufficient for the distributive shares sought by the legitimate grandchildren. A bastard child, Francis Edges, was bound to Nathaniel Cockayne to the Churchwardens and Overseers of St. Alkmund's in Derby. The account was incomplete, due to the fact that no bills had been received for legal fees from the proctors of the court.

The court in this case was protecting the interests of the legitimate heirs at the instigation of their guardian who had collected all the necessary evidence for the mis-management of the estate. They could not, however, punish the administrator for embezzlement. He would have been judged by society at large and his reputation would have suffered accordingly. It has not been possible to trace any charges brought in the civil courts, although this line of action may well have been pursued subsequently.

C The changing patterns of testamentary business in the ecclesiastical courts

i) Changing patterns of business between the sixteenth and eighteenth centuries

Houlbrooke's work on the period 1520-1570 can give sufficient information to provide a baseline from which to make a very simple assessment of the changing patterns of the testamentary work of these courts. Unfortunately, there is very little quantification of the data which would enable more solid conclusions. The temporal difference is also such that conclusions are slightly tenuous. Houlbrooke found a great increase in testamentary litigation in the diocese of York, Chester, Norwich and Winchester in the 1530s during the upheavals of the Reformation. He saw this as a response to the 'declining respect for the courts, coupled with increasing slackness on the part of their officials ...'. (77) Litigation relating to questions of validity of wills was in excess of that concerned with the payment of legacies and provision

of accounts in the sixteenth century consistory court. (78) The choice of those appointed as executors was questioned in the early period but was of little or no concern after the Restoration. The role of the clergy in the preparation of wills had also declined by the eighteenth century when the services of civil lawyers were becoming more readily available to produce the necessary document. Wills were also made prior to any terminal illness in the eighteenth century, whereas people were very unwilling to make their wills until the last possible moment in the earlier period. (79)

The administration of estates produced a very similar pattern of complaints in the sixteenth and eighteenth centuries. Many cases were brought for unpaid legacies in both periods, and required the presentation of inventories and accounts. Cases of legacies to minors also gave rise to concern in both periods, although the evasion of payment by claiming lack of knowledge of the correct age of the legatee had ceased by the eighteenth century. (80)

John Addy's work on the later testamentary business of the courts of York, Chester, Richmond and Gloucester, using court act books, court files, and files of contested wills from 1660-1800 involves no quantification of data, merely a wide-ranging descriptive narrative. (81) In fact, only the consistory courts of York and Chester were used, the remainder of his evidence being drawn from Visitation courts, a Commissary's act book, and books of contested wills. (82) Addy claimed that the legal profession was not well organised and that all kinds of people could draw up a will - as they still can! He also points out that people were fond of litigation and that many of the causes brought to the courts were of minor significance - involving 'too

trivial a matter upon which to base a sound case that would conclude in the court'. (83) These courts were about mediation at a time when statute law was limited and arbitration by a third party was the norm in society.

Unfortunately, the nature of Jacob's work on the Norwich Consistory Court precluded the collection of any quantitative information on the testamentary business of the courts, except to state that 'cases about the validity of wills and especially against executors, either for failing to make adequate inventories of the effects of the deceased or for not proving wills were very common'. (84) This generality echoes the pattern of business in the eighteenth century Lichfield courts.

ii) The efficiency of the consistory courts

The efficiency of the church courts in this sphere of their activites has been assessed by Houlbrooke for the earlier period with the remark that 'they did not fulfil it too badly'. (85) Having examined the work of the consistory courts in the eighteenth century, their context within the diocese, and bearing in mind the lack of alternatives, they would appear to have been remarkably efficient. The length of a cause which has previously been seen as procrastination on the part of the proctors was not only dependent upon their attitudes, but also the depth of the purses of those who wished to pursue their cause, and the tenacity of their sense of injustice.

Erickson also concluded that the courts were efficient in their pursuit of accountants (86) but suggested that testamentary business formed a very small part of total litigation in the church courts. (87) This may have been true in the early modern period, but by the eighteenth century in Lichfield, this business formed a major part of the work of the Lichfield courts. Although Addy claims that these causes demonstrate that contemporaries had ceased to live 'in love and charity with all men' (if they had ever done so!), they in fact supply evidence that peacemaking still continued, and was indeed encouraged, within the wider community. (88) The evidence of individuals resorting to the law at Lichfield would suggest that they were not vexatious, merely seeking the last resort of arbitration. Jacob's work on the eighteenth century courts of Norwich also concludes that the 'effectiveness of the courts should not be underestimated', in spite of the lack of quantitative data. (89)

The lack of verdicts is, to the twentieth century historian, a source of disappointment, and to the eighteenth century proctors it represented a possible shortfall in fees. But to the church in the eighteenth century it was usually a sign of success in that the parties had finally negotiated their own '*quietus est*'. (90)

References:

1. LJRO, B/C/5/1714/49:Testamentary:Philips c Winter, Deposition of John Peploe of Stallington, 1714.
2. LJRO, B/C/5/1714/62:Testamentary:Philips c Winter, Deposition of Mary Peploe.
3. A.L.Erickson, Women and Property in Early Modern England (1993), p.37, quotes two brief studies: Houlbrooke, Church Courts and the People, ch. 4; R.A. Marchant, The Church Under the Law (Cambridge, 1969), pp.109-110.
4. To write up in a clear hand and regular legal form for signature, the draft of a document which was already in existence.
5. A holographic will was one written by the testator.
6. A codicil was an addition to a will, written at a date after the signing and sealing of the original.
7. These too could be lawyers although not overtly stated; see will of Robert Owen, 1710.
8. The decisions of the probate courts in these matters were binding until the Probate Act of 1857, which provided for the creation of a civil Court of Probate from January 1858.
9. On the *quorum nomina* citations, where individuals are listed parish by parish. The notes on these documents make them almost into act books, recording those who were to be further cited, those who had left the area, and a host of small details.
10. LJRO, B/A/18/Probate books (uncatalogued). September 1723-December 1724; June 1763-May 1767; January 1770-May 1771.
11. By the 1797 edition.

12. William Nelson published a volume, Lex Testamentaria, as part of a series of law books, in 1714, two years before the appearance of Gibson's *Codex Juris Ecclesiastici Anglicani*. He also published a series of popular law books including *Lex Manerium*, on manorial law, and a similar volume for the Justices of the Peace.

13. See other cause types.

14. A probate court was held at Lichfield for the granting of probate on a day to day basis but these were not part of the consistory courts, although the staff involved were probably the same. Other probate courts were held twice a year in the larger towns in the diocese.

15. Proof in common form required the witnesses to the will to testify as to its validity. The solemn form of proof required published depositions from witnesses and a judgement from the courts in writing. Burn, Ecclesiastical Law IV, pp.249-251.

16. Rash administration related to the intervention in the affairs of the deceased prior to a grant of probate being given by the courts.

17. A guardian was assigned by the courts to a minor to act on their behalf in a court of law.

18. A spoken will, often made close to death, and not written down until after the event.

19. B. Trinder, and J. Cox, Yeomen and Colliers in Telford (Chichester, 1980).

20. M. Spufford, 'The Limitations of the Probate Inventory', in English rural society, 1500-1800. Essays in honour of Joan Thirsk ed. John Chartres and David Hey (Cambridge, 1990), pp.139-174.

21. A.L. Erickson, 'An introduction to probate accounts', in G.H. Martin and P. Spufford (eds.), The Records of the Nation (Woodbridge, 1990).

22. P. Spufford, 'Les Liens du credit au village dans l'Angleterre du XVII siecle', Annales Histoire Sciences Sociales 49, 6 (1994).

23. Jas.II. c[16],17.c.17 Statutes of the Realm 1819, p.19.

24. A surrogate was a lawyer selected by the Bishop or chancellor to act in their place for a specific purpose.

25. Fraudulent administration related to the dubious management of funds from an estate.

26. In the late C17, during the suspension of Bishop Wood, the Archbishop of Canterbury took over the administration of the diocese *sede plena*. In the last decade of the seventeenth century a number of citations for rash administration were issued.

27. In some cases this could become a problem. The estate of Edward Repington of Amington Hall in 1735 generated 10 renunciations, probate eventually being undertaken by the unlikely combination of a member of the family and a labourer. Edward left all his bequests to his servants and executors in his will, 'for the trouble he was going to cause them ...'.

28. By its nature, probate and testamentary business had to be carried out quickly to avoid problems that would arise when witnesses to the will also died, thus invalidating the claims of those who insist that these courts were very slow in their business. Houlbrooke quotes some complaints on the speed of early probate in Church Courts and the People, pp.96, 105.

29. LJRO, B/C/5/1714:Testamentary:Philips c Winter.

30. Excess alcohol was considered to engender a form of madness.

31. LJRO, B/C/5/1791/91:Testamentary:Coton c Executors of Coton. Thomas was described as a stamper and piercer of metals.
32. LJRO, B/C/5/1791/92:Testamentary:Coton c Executors of Coton.
33. See pp.390-494. Cox c Cox, LJRO, B/C/5/1707.
34. See pp.385-387. Holland, minor c Holland, LJRO, B/C/5/1814.
35. 29 C.2.c.3.
36. 22 & 23 C.2.c.10.
37. As defined by the 1685 Act.
38. Ingram, Church Courts, Sex and Marriage, p.68.
39. Houlbrooke, Church Courts and the People, p. 274.
40. Erickson, Women and Property. She quotes on p.249 a figure of 100-200 causes per year in the Exchequer Court at York, but does not put these figures into a proportional or temporal context.
41. Houlbrooke's figures include both office and instance causes.
42. E.J. Carlson, Marriage and the English Reformation (Oxford, 1994), p.180.
43. Erickson, Women and Property, p.37.
44. The use of decades was preferred due to the volume and complexity of the data.
45. These only give the relative values of the estates involved due to the fact that they simply list the assets of the deceased. Margaret Spufford's work has shown how these can be considerably reduced when the debts are taken into account.
46. These citations very often took the form of a citation with intimation, in which the defendants would be offered the chance of administration and if nothing more was heard, then the creditors would be offered the same opportunity.
47. LJRO, B/C/5/1718/6, disputed will of Anne Adrian.
48. LJRO, B/C/5/1718/20.

49. Girls could make a valid will from the age of 12 onwards, although it ceased to be valid on marriage.

50. LJRO, B/C/5/1814/32.

51. LJRO, B/C/5/1814/30.

52. LJRO, B/C/5/1714/42:Testamentary:Philips c Winter, Allegation on part of William Winter.

53. LJRO, B/C/5/1714/62:Testamentary:Philips c Winter, Deposition of Mary Peploe.

54. LJRO, B/C/5/1714/42:Testamentary:Philips c Winter,Allegation on part of William Winter.

55. An interlocutory decree was one produced part way through a cause, to clarify a particular point, not necessarily to resolve the cause.

56. Each witness was asked which party they favoured, and most simply wanted 'right to prevail'.

57. Lambeth Palace Library, Court of Arches, Houston cause no. 7179, Philips con Winter, Sentences, B15, no. 10.

58. LPL, J9/27 Bill of Costs, Philips con Winter, 1718.

59. LPL, J9/24 Bill of Costs, Philips con Winter, 1719.

60. An attorney was a lawyer empowered to speak on behalf of his client, rather than merely carrying out his instructions.

61. William Yates' map of Staffordshire in 1775 shows a Portway House in the parish to the south of Clifton.

62. LJRO, B/C/5/1707/38:Testamentary:Cox c Cox.

63. He described himself as a domestic servant.

64. Most lawyers at this time described themselves as gentlemen.

65. See note 10.

66. LJRO, B/C/5/1707/36b.

67. LJRO, B/C/5/1707/38.

68. An isolated farm in Clifton Campville parish.

69. The predecessor of the modern form where the balance of mind was disturbed.

70. LJRO, B/C/5/1707/46.

71. LJRO, Probate registry, will of Benjamin Cox, 1707.

72. Under the statute of 22 & 23 C.II c.10, known as the Statute of Distribution, the judges in the ecclesiastical courts were enabled to call administrators of intestate estates to account for their division of the surplus of the estate. This had to be distributed according to precise rules. Burn, Ecclesiastical Law IV, p.393.

73. An item for the purposes of this thesis consists of an object or group of objects with cash total beside them.

74. LJRO, B/C/5/1778/73:Testamentary:Tunaly by his guardian c Needham, Allegation dated 19th Feb 1779.

75. This technique was used to 'round down' numbers of items stolen in the civil law courts to avoid excessive sentencing, particularly the use of the death sentence for minor offences.

76. LJRO, B/C/5/1778/70, 71 and 73.

77. Houlbrooke, Church courts and the People, p.115.

78. Ibid., p.97.

79. Ibid., p.101.

80. Ibid., p.103.

81. J. Addy, Death, Money and the Vultures: Inheritance and avarice, 1660-1750 (1992), p.157. The exact dates of only six of the documentary sources are given, the remaining eleven are listed by reference number and no dates given.

82. A commissary was an official nominated by the bishop to undertake diocesan business in the form of taking oaths from

witnesses, and hearing causes in the lesser courts of the diocese, as in the Archdeaconry of Leicester in the seventeenth century.

83. Like many other causes brought to the church courts, there was often more to them than was immediately apparent.

84. Jacob, 'Clergy and Society in Norfolk, 1707-1806', (Ph.D., University of Exeter, 1982), p.232. The use of Act Books for this type of work can make the counting of these causes very difficult, particularly when only new causes are counted. The older causes may in fact may have made far more work than the incoming business.

85. Houlbrooke, Church courts and People, p.116.

86. Erickson, Women and Property, p.36.

87. Erickson, Women and Property, p.37.

88. Addy, Death, Money and the Vultures, p.149.

89. Jacob, W.M. 'Clergy and Society in Norfolk', p.227.

90. *Quietus est*, was the phrase used by the court proctors to designate an estate that had successfully been wound up.

CHAPTER EIGHT : CONCLUSION

And when they came to Wellington to the Justice they go,

These two Whores the[y] went up in their second hand clothes,

But when they came to the justice they soon knew their doom,

But if they had said another word they'd been put out of room.

O then said this London whore we'll take another way,

For we'll go to Lichfield Procters without more delay,

And when they came there no business could be done,

Then says the other sister our Money will soon be gone.

So now to conclude and finish my Song,

I think that the Neighbours wont think there's done any wrong,

The Procters will have their money is pla[i]nly to be seen,

And we shall live to see them as poor as they have been.

The Humours of Bakehouse Lane, Newport. (1)

There is virtually no evidence from local sources about how contemporaries viewed the Lichfield courts and their proctors. However, the last three verses from an undated broadsheet, The Humours of Bakehouse Lane, can shed a little light on the subject. It was obviously written for readers who knew the story well. This ballad tells the adventures of two 'ladies of the night' from London visiting Newport in Shropshire. They had acquired some money by dubious means, and promptly got themselves 'so drunk they could not stand uptight' (*sic*). The then pressed an unknown cause before the local magistrate at Wellington and to the proctors at Lichfield, but were

discomforted by both. The fact that the Lichfield proctors were going to get their money at the expense of the two whores was obviously a source of considerable satisfaction to the writer, rather than a criticism of their possible greed. Though the proctors are not identified, their part in returning the scandalous women to their original state of poverty seems to have given a satisfactory sense of retribution to the 'Neighbours'.

These attitudes help to place the courts in their community framework. By considering the original purpose of the church courts we can place them in their proper perspective in a 'face-to-face' agricultural community. In this type of society intervention by relatives and friends in the problems of others was commonplace, and disputes were usually solved through negotiation by third parties. The consistory court fulfilled the Bishop's promise to 'maintain ..... Quietness, Love and Peace among all men' by the correction and punishment of the 'unquiet, the disobedient and the animous', who had exhausted the local negotiation procedures. To hear the dispute in the cathedral, on hallowed ground, with all the proceedings duly and publicly written down by appropriately dressed lawyers, without the sanctions of fiscal or corporal punishment, seems to have been extremely effective. It was very rare for defendants to appear more than once in the courts.

Very few scholars, so far, have undertaken studies of the eighteenth century church courts. Four historians have looked at particular areas of court business, often that relating to sexual behaviour, and within restricted time frames. Meldrum has looked at the London Consistory Courts between 1700 and 1745, focusing on their

use by women. (2) Morris has worked on the defamation business of the Consistory court of Bath and the archdeaconry court of Wells between 1733 and 1850, using the act books of both courts. (3) Kinnear has examined the office business of the Correction Court of the diocese of Carlisle between 1704 and 1756. (4) Finally, Till has worked on the entire business of the Chancery and Consistory courts of the Diocese of York between 1660 and 1863. (5) None of these dioceses is easily comparable with Lichfield. The London Consistory was dealing with causes from an overcrowded urban area - the largest in the world at the time. The range of work was not as wide as at Lichfield, in that there were no tithe causes heard. The Bath and Wells analysis used causes from both archdeaconry and consistory courts to examine only one element of their work. The diocese was wealthy but largely rural, with small settlements involved in coal mining. The only large town, Bath, had a very unusual population structure as a result of its popularity as a spa town. The Carlisle courts represented causes from an impoverished and totally rural population. The York courts served a very large rural diocese, and also functioned as the appeal courts of the northern Metropolitan. This was a diocese dominated by upland farms and huge landed estates. The lesser courts of the diocese probably dealt with the everyday types of dispute that passed through the Lichfield court, though the archdeaconry court of Nottingham functioned as a consistory court in the eighteenth century, by virtue of its distance from York. All these courts served very different social populations from the Lichfield and Coventry court.

The Lichfield diocese contained a wide variety of settlement types. Rural parishes predominated, although a number of market towns, were growing quickly. Only three of the county towns of the

four counties of the diocese were represented in the courts, and they provided noticeably few causes. The main growth points in the diocese were Birmingham and Coventry, two centres heavily involved in industrial development. A high proportion of rural parishes were enclosed during this period, and some of the effects of this may be seen in the tithe business of the court.

This thesis is the first study of a normal consistory court through the long eighteenth century, and has set out to look at the work of the court in its entirety. Fig. 8.1 demonstrates the extent to which the Lichfield courts continued to be used through the period. One of the main findings to emerge is that the court continued to handle a substantial volume of business right through the eighteenth century. There was a slight contraction in business in the middle of the century, but this was short-lived. Business expanded to reach a peak around 1780, but by the early years of the nineteenth century, a final decline set in. Many historians have focused on the disciplinary role of the courts. The decline of this aspect by the end of the seventeenth century has led to a widespread assumption that these courts had very little significance in the following century. In fact, it is now clear that all five major categories of business remained buoyant for a further hundred years. Their pattern of legal practice seems to have survived the civil war 'hiatus' remarkably well. The fact that one proctor can be seen to continue to practice, albeit adapting the procedures to a 'civil' form, probably ensured their speedy recovery. In spite of the perceived rivalry between civil and canon law, the courts complied with new civil laws with considerable efficiency

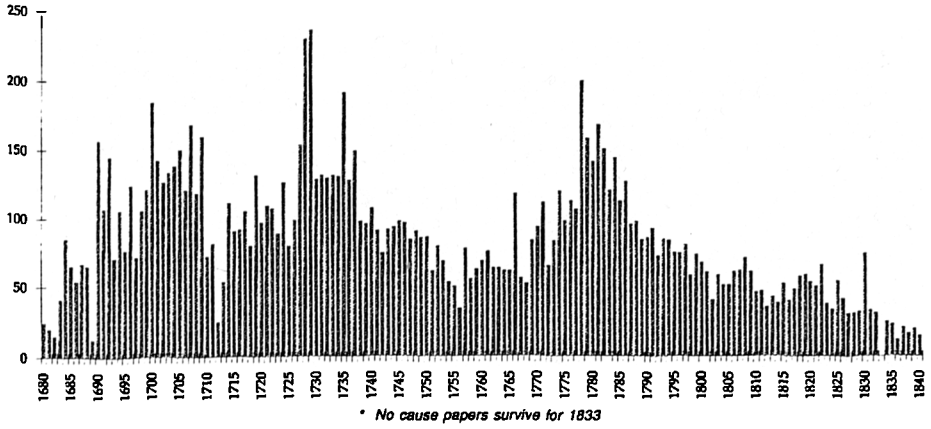

Fig. 8.1 The number of causes in the Lichfield Consistory Court, 1680-1830.

Changes in the civil law at this period might have been considered threatening to the ecclesiastical courts. Tithe disputes requesting payments of less than forty shillings could be taken to the local Justice, under 7 & 8 WIII c.6. Hardwicke's Marriage Act removed much of the necessity for disciplinary action against those who had married clandestinely, by defining the legal procedures for forming a valid marriage. The 1787 Act removed the possibility of presenting individuals for pre-nuptial fornication, more than eight months after the event, or if the couple had subsequently married. (6) The list of such statutes is long. Yet the courts continued to flourish at Lichfield, certainly until the turn of the nineteenth century. It was not until 1804 that the number of proctors was reduced from six to four. The fact that most causes passing through the Lichfield courts had been taken there voluntarily to resolve intractable disputes could be one major reason for their survival. They fulfilled a need. Till's argument that public confidence in the York Consistory and Chancery courts was reflected by the swing to instance business as early as the 1670s and 1680s suggests that the courts were well respected for their efficiency by communities across that diocese.

Other legislation which might have affected the courts seriously were the Stamp Acts, passed intermittently from the 1690s. These increased the proctors' costs, and thus the fees of the court, whose procedures relied heavily on paper. (7) Stone claims these acts dealt a severe blow to the business of the consistory courts, but the effects at Lichfield appear to have been minimal, although they may have been responsible for the comparatively small flow of work through the courts during the 1690s. (8)

In the Lichfield courts, analysis had revealed the rural origins of a high proportion of the causes. By the middle of the century however, there was a rise in the proportion of causes from market towns, and Birmingham and Coventry provided a high proportion of causes in the later eighteenth century as their populations grew substantially. Thirty-five percent of defamation causes came from Birmingham and Coventry in the 1770s and 1780s. As business declined, the pattern of origin reverted again to the rural parishes, in the early part of the next century, suggesting that other forms of conflict resolution were being used in urban areas. One unusual feature of the Lichfield courts is that remarkably few causes originated in the county towns of the diocese. This may in part have been the result of the peculiar jurisdictions in two of these, the royal free chapels of St. Mary's in Shrewsbury and St. Mary's in Stafford, which would have heard causes from the inner areas of these towns. These towns, as centres of local government administration, would have been well supplied with civil lawyers, providing alternative routes for potential litigants. The fast-growing market towns provided an increasing number of causes.

The involvement of women as plaintiffs in the Lichfield courts is more extensive than has previously have been thought, when all the business types are taken into consideration. The two geatest areas of their involvement at Lichfield were in defamation and testamentary causes. As noted by researchers in other periods and other courts, a very high proportion of defamation business consisted of married women suing men. (10) Between 1770 and 1789 the Lichfield courts heard 771 defamation causes. Accusations of adultery were very serious. They sowed marital discord and disruption in the community, involving another (possibly innocent) party and his family. In some cases this could raise doubts and fears about the legitimacy of inheritance. It has also been possible to show from the Lichfield evidence that where males were involved in defamation disputes, as both plaintiffs and defendants, they were often of similar occupation and status within the community. There seems to have been little abuse between higher and lower social groups, compared with those between individuals of a similar social status.

The reasons for the gradual decline of this business are not clear from any of the studies so far published. There are three apparent options. It may be that reputation was ceasing to be important in urban areas by the 1790s, among the middling and lower social groups, or that traditional terms of abuse such as 'whore' were losing their force or dropping out of use. More likely, in the context of greater mobility, rapid urban growth, and the declining authority of the established Church, it may be that church courts no longer appeared an attractive means of defending reputation. The urban working classes may have settled for more direct methods, including physical force,

while the more respectable middle classes may have found other courts more attractive, or even the privacy of a solicitor. It is tempting to see the development of the Court of Requests in Birmingham, under William Hutton's guidance, as removing a great many quarrels from the streets. (11) The irritants behind the background quarrels had probably been removed in the form of a cheaper option to obtain redress. William Hutton's writing give a series of graphic stories of the problems that his courts dealt with.

The thesis has made an initial exploration of other areas of court business rarely considered by historians, notably other aspects of office business, and tithes and testamentary causes. Office business included the granting of faculties. These documents can chart the development of the civic use of churches, with moves to beautify the church interior, rather than simply indulge the demands of the wealthy for ever grander pews and final resting places. The consistory court itself was affected in this process, being moved whilst the cathedral was undergoing renovation, on both the interior and exterior. The Close too, was cleared up at the end of the eighteenth century. (12) Faculties for the re-pewing of parish churches had important implications, in that they removed the ancient links between property and pews. The sub-division and renovation of properties often led to quarrels over seating in church, and re-pewing could provide the perfect solution. Not only would the population have individual, well-defined seats but the exercise brought in money in the form of 'pew rents' to help to maintain the fabric of the building.

Tithe disputes played a considerable part in the work of the Lichfield court. The issues at stake in individual tithe disputes passing

through the Lichfield consistory in the eighteenth century are often impossible to identify in any detail. The majority of the causes are represented simply by citations, both for individuals and in *quorum nomina* form. The citations were not well defined, referring to ecclesiastical dues, which might involve tithes or Easter Offerings or both. (13) Many of these causes were settled on receipt of the citation and progressed no further. The enclosure process had resulted in the extinction of many great tithes, and those causes that came to court were generally for the collection of small tithes. The effects of enclosure on small tithes were dramatic. After enclosure, stock were more often raised for meat, not for multiplication, upon which the tithe system was based. Enclosure also reduced the number of small farmers within a parish who would keep small numbers of stock for breeding and, in the case of sheep, for shearing. The church courts provided a highly suitable mechanism for clergy claiming unpaid tithes. Whilst they could not force payment, they offered a non-antagonistic means of bringing pressure to bear which would often be enought to trigger a private settlement. If this failed to materialise, they could be used as a stepping stone to the civil courts by the use of a prohibition. This would legitimately transfer the cause to the civil courts where demands for cash payments could be heard.

Those causes that did proceed demonstrated the immense complexity of tithe collection by this period. There was an enormous variety of local custom even within a single parish, resulting from private deals over the years between individual farmers and the tithe owners. It generated huge scope for underlying disputes with outbursts of old resentments leading to the courts. Tithe causes included a number of causes for the payment of Easter Offerings in the

Lichfield courts. Though these payments were very small indeed, by ceasing to collect them the clergy would have eventually forfeited the right to do so. They may also represent clergy trying to bring wavering members of their congregation back into the church. The ephemeral records generated by the collection of small tithes and Easter Offerings demonstrate the meticulous record keeping needed by the clergy to maintain their incomes. They also show the close attention to practice and custom by the parishioners.

Matrimonial disputes at Lichfield slowly increased in number through the century and changed in character. Office causes for clandestine marriage causes disappeared, but instance claims for nullity were renewed under the guise of the parties not conforming to the requirements of the Hardwicke Act. In the Lichfield sample periods, the proportion of female plaintiffs formed around 75% of the total number in matrimonial disputes. One very significant factor is that the pattern of separation petitions by women changed character over the period. At the beginning of the century, women were bringing causes against their husbands for separation a *mensa et thoro* on the grounds of cruelty. Towards the end of the century, there were an increasing number of causes for separation *a mensa et thoro,* based on the husband's adultery. Stone states that very few plaintiffs in separation causes in the London Consistory Court were female and that a very small proportion of causes involved the adultery of the husband. (14) Ingram also reported that cruelty formed the basis of female requests for separation in the pre civil war period. (15) By contrast Leyser found that in the medieval courts, 'For adultery, there was no double standard'. (16) By the end of the eighteenth century there seems to have been less tolerance of male misbehaviour than

previously thought, and a reversion to the more equitable situation described by Leyser in the medieval period.

The testamentary business of the church courts has been examined by Claire Gittings and Amy Erickson in the pre-war period, in terms of burial customs and funerary practice, and of widows and their property. (17) The Lichfield study has confirmed that testamentary business also brought a great many women to the courts. They came as plaintiffs, defendants and witnesses, both to the making of the will and the death of the testator. The state of mind of the testator was extremely important if the validity of the will was questioned, and a significant number of causes revolved around this issue. It was often necessary to prove the will in solemn form, to establish the extent of disability of testators in their last illness, and confirm their sanity at the time of will-making. The process of making a will was an important one and required the evidence of witnesses, often the maid servants of the house, to ensure that the process had been correctly carried out.

One of the other salient features of testamentary business of the eighteenth century that has emerged from this study is the gradual reduction in the numbers of creditors pursuing debts from the deceased, suggesting that credit was becoming a little less elastic. By the nineteenth century, legatees were claiming their legacies with greater frequency.

Another important fact to emerge has been the degree of co-operation between civil lawyers and proctors of the church courts. The functions of the two courts were very different and, although civil and

statute law gradually superseded canon law, the process was a protracted one.

Little attention has been paid hitherto to the social status of the litigants in the church courts. The only work that has been done so far relates to the marital status of women in defamation disputes. Early seventeenth century citations did not often give the occupations of the defendants. By the middle of the eighteenth century, however it was common practice to include the occupations of defendants on citations. This information, when compared with a cumulative listing of the occupations of those given by an unusually early street directory of Birmingham in the 1770s has enabled a picture to be built up of the plaintiffs in relation to the population as a whole. Those using the courts for defamation causes would appear to have mirrored the population at large in Birmingham. Inventory values from testamentary causes would suggest that the estates that were in question were worth, on average, less than £50, although they rose as time went on. The users of the Lichfield courts can be seen as those of the 'middling sort' and slightly lower status, who left estates worth in the region of £50, and sometimes up to £100.

The consistory courts did not disappear suddenly; their decline was a slow process. A three-year running mean of the numbers of causes from 1770 shows only a very gradual fall in numbers. Defamation causes disappeared fairly rapidly during the 1780s. The elements of business which could be handled only in ecclesiastical court continued to flourish, whilst those that could be dealt with in other courts slowly disappeared.

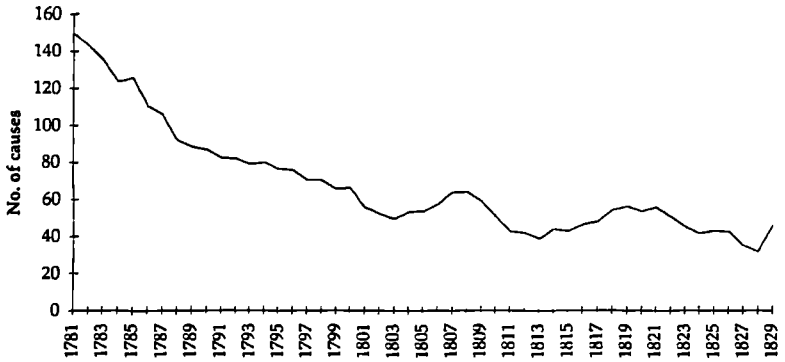

Fig. 8.2 Three year running mean of the number of causes passing through the Lichfield courts.

The concept that the most important work of these courts was that of 'social control' and the 'imposition of an obsolete moral code upon a recalcitrant population' can now be shown to be invalid. (18) Most causes at Lichfield appear to have emanated from within the rural communities of the diocese. Those brought before the courts for immorality were those whose behaviour was causing unacceptable problems within the parish; they were reported by neighbours and churchwardens, not 'sniffed out' by a court apparitor.

In instance causes, plaintiffs would have recognised that a citation from the church courts offered a cheap and simple means to bring an intractable problem to a head, one which also signalled to the other party that there was no threat of financial or corporal punishment and that the door to negotiation remained open. The process of canon law was not ineluctable - it could be stopped at any time. Civil law was a process that continued to a decision, often enquiring into other matters. In canon law, questions were restricted to the immediately relevant facts. The causes that reached the

consistory court were probably those that had defeated local, informal attempts at mediation.

The church courts are often seen as failures, because of their lack of punitive sanctions and the small proportion of causes that reached a sentence. A cause that disappeared from the court record because the parties had agreed a private settlement represented a success, not a failure of the system. The suit had served to trigger an agreement which would restore Christian charity and social harmony much more effectively than a sentence of humiliating penance or excommunication could hope to do. Penance and excommunication have been seen as insignificant, compared to fiscal sanctions and corporal punishment. In fact, it may be argued that the success of these courts depended upon these two points. Canon law developed from a moral code used in agricultural communities. Disputes in such communities had to be resolved to the satisfaction of all parties in such a way that there could be no blame or recrimination associated with the solution of the problem. Sentences were used when it was legally necessary, for example to determine whether a will or a marriage was valid, but the main aim of the courts was to foster harmony, compromise and Christian community.

In the long term the decline of the church courts reflected social and economic changes, and the decline of the Established Church itself, marginalised by the growth of non-Conformity and the decline of attendance, especially in rapidly growing urban areas. This thesis has demonstrated however, that in the diocese of Lichfield the courts were by no means anachronistic or defunct in the eighteenth century. Many historians have dismissed the church courts as in terminal decline, or

insignificant by 1700. In Lichfield they continued to serve an important and substantial role in the community for another century.

References:

1. LJRO, B/C/5 Undated broadsheet.
2. Meldrum, 'A Women's Court in London'.
3. Morris, 'Defamation and sexual reputation'.
4. M. Kinnear, 'The Correction Court in the Diocese of Carlisle, 1704-1756'.
5. Till, 'Administrative System'.
6. 27 Geo.III, c.44 Act for the Better Regulation of suits in *Ecclesiastical Courts*.
7. A shortage of paper has been noted on several occasions when earlier documents have been cut up to provide the 'wafer' for a seal.
8. Stone, Road to Divorce, p.43. Burn quotes the cost of these fees in 1795 as being 2s.6d. for a citation, monition, libel, allegation, deposition or inventory, with an answer, final decree or sentence costing 2s. Burn, Ecclesiastical Law III, p.377.
9. Kinnear, 'The correction courts in the diocese of Carlisle', p.196. Figures for only five years were missing from the sequence.
10. J.A. Sharpe, 'Defamation and sexual slander', pp.10,27; Meldrum, 'A Women's Court in London' p.6; Gowing, Domestic Dangers, p.61.
11. William Hutton became Commissioner of the Birmingham Court of Requests in 1772.

12. LJRO D30/6/1/11.

13. Church levies causes can be identified by the churchwardens acting as plaintiffs.

14. Stone, Road to Divorce, p.193.

15. Ingram, Church Courts, Sex and Marriage, p.183.

16 Henrietta Leyser, Medieval Women (1996), p.116.

17. C. Gittings, Death, burial and the individual in early modern England (1984); A.L. Erickson, Women and Property in Early Modern England (1993).

18. Stone, Road to Divorce, p.232.

APPENDICES

APPENDIX 1.I

Law Terms

Michaelmas Term:

1st Session of Michaelmas Term is 23d of Oct
2d is next after Feast of All Souls, 3d Nov
3d is next after the Feast of St. Martin the Bishop, 12 Nov
4th is next after Feast of St. Edmund the king, 21st Nov
5th is next after Feast of St. Andrew the Apostle, 1 Dec.

Hilary Term:

1st Session next after Feast of St. Wolstan the Bishop viz 20 Jan
2nd Session next day after Feast of St. Paul the Apostle, 26 Jan
3d Session next day after Feast of St. Blaze the Bishop 4 Feb
4th Session next day after Feast of St. Valentine the Bishop 15 Feb

Easter Term:

1st Session next after Feast of Passover
2d and 3d as the judge pleaseth
4th next Day after Ascension of our Lord Jesus Christ

Trinity Term:

1st Session next day after Feast of Holy and Undivided Trinity
2d, 3d and 4th Sometimes the next day of the Feast of St. John the Baptist

APPENDIX 2.I

DRAFT OF SECURITY TO BE GIVEN BY AN APPARITOR: WORCESTER DIOCESE, C18.

Whereas the above bounden A:B: at the earnest desire and petition of himself and friends hath been admitted to the office or Place of Mandatary or Apparitor for the Deanary of W: in the Diocese of Worcester by the above named William Lloyd Chancellor of the said Diocese to continure during the good will and pleasure of the said Chancellor and no longer; And for as much as for the due and faithfull discharge of the said Place of Mandatary or Apparitor great Care, diligence, fidelity and honesty are required: and that no prospect or promise of reward directly or indirectly by Money or other Consideration whatsoever may obstruct or corrupt him the said A:B: in the Execution of the said Office or Place, by concealing the Crimes of Offenders or unjustly oppressing or molesting the Innocent, to the hindering or perverting Justice, or bring disparagement upon the Ecclesiastical Jurisdiction of this Realm in general, or of the Consistory Court of Worcester in particular The Condition of the Obligation is such that if the above Bounden A:B: at all times hereafter during his continuance in the said Place for the Deanary aforesaid shall well and faithfully execute the said office and Place according to Lawe and the Custome and usage of the said Diocese, and shall truely without delay execute all Citations, Orders and Decrees whatsoever made or to be made by the said Chancellor his lawful Surrogates or Surrogate, or other competent Judge of the Consistory Court of Worcester for or upon any manner of Offence business matter or thing arising within or founding the Jurisdiction of the said Court, within the said Deanary, or

shall not for the Execution of the same demand, take or receive (except volunteering offered) any greater Fee or Reward than is done by the Table of Fees or shall be allowed by the said Chancellor or other competent Judge: and shall and will not at all times by all lawfull ways and means he can, make diligent and strickt Enquiry after and take Information of all manner of Crimes, Offences matters and things of Ecclesiastical Jurisdiction within the said Deanary that may can or ought to be corrected or reformed by the said Court, and the same when discovered shall not fully and speedily make known unto the said Judge of the said Court, or Register thereof without any reservation or concealment whatever, or if he shall not for any regard or Consideration whatsoever in present or by promise in Money or otherwise conceal or anyways discourage the discharge or hinder the Crimes of any Offender or if he take part with and be any ways in Council with any party that shall have any Suit, Contest Complaint or Prosecution suit or criminal in the said Court, or shall not for lucre or gaine, Envey or ill Will inform the said Court maliciously against any person innocent or at least so publickly reported, that thereby such persons may be unjustly molested or prosecuted, or the Judge of the said Court or Register any ways may be troubled scandalized or damaged for the Same. And lastly if he shall and will not at all times hereafter Save harmless and keep indemnified the said Chancellor, his surrogates and Register of the said Court office and from all Actions, Suits and troubles that shall or may arise or be commenced or presented against them or either of them, for or concerning any Act or thing the said A:B: shall happen to do or permitt to be done in the Execution of the said Place or under pretence thereof, then this Obligation shall be in full force, or else void.

(WoRO 2670: Draft of the Security to be given by Apparitor.)

APPENDIX 2.II

THE RULES OF THE LICHFIELD COURT

The following rules were located in a precedent book in the Worcester court records, which contained material from the Lichfield courts. (1) The 33 rules were probably written out by a single individual, of limited ability, using at least two pens. Three items, namely 9, 13 and 20 have crosses superimposed upon them, as if that rule had ceased to be important and this in noted in the transcript. One item has been removed from each of the first two, but replaced with other text, and the later text is retained with the earlier deleted material in italics and in brackets. These rules are not dated but the book in which they were written can be dated to around the turn of the 18th century. The only Thomas to be collated to the see at this time was Thomas Wood, whose career is of great interest in that he was removed on the orders of Archbishop Sancroft in July 1684 and re-instated in May 1686.

Rules Agreed upon by the Official Regester and Procurators of the Consistory Court of the Rt Reverend Father in God, Thomas Lrd Bpp of the Diocess of Lichfield and Coventry to be observed from time to time in the Prosecution of all Causes in the sd Court

Inprimis Proctors s[h]all be appointed *apud Acta vel per instrumentum authenticum* wch shall be exhibitted and left in the Court, [*by the Court Day on wch lites contestacon is made*] at the time of their first appearance

Item the plt shall upon returne of ye Citation lawfully served vizt personally or by viis et modiis give in his Libell or Arles, [*and a copy to the defts Proctor and wthin three days after leave a copie with the Regester*] vizt an Original to lye in the Regrs office and a Copy to the Defendents Proctor

3. Item in case the plt doe not give in his Libell or articles as aforesd the deft shall be dismissed wth costs vizt 6s.8d *prter feodo moniconis*

4. Item And if the Deft appeare though the process be not return'd he shall be dismisd wth 6s. 8d costs – *prter feod moniconis* If the plt will not proceed

5. Item If the Deft being Lawfully cited doe not appeare by him selfe or Proctor the first Court day upon retourne of the process he shall be Excom without any resurvation

6. Item if the Deft or his Proctor appeare to the schedule where [*on*] to the plts Libell is to be annexed or therewth left; the Regester shall not receive his appeareance unless he gives notice to the plts Proctor that he or some of the Proctrs for him may apeare before the Judge and give in his Libell and pay the accustomed fee of 10d but the Excom shall issue out as if there were noe appeareance at all

7. Item The Defts Proctor shall Joyne issue by answering negatively or affirmatively the same time the Libells or Arles are [*given in*] admitted

8. Item but If the Deft shall the next Court Day after the Libell is admitted make a tender or Confession it shall be the same thing as If the tender or confession had beene made before the Contestacon of the Suit

9. Item And the Deft (if it be required by the plt) shall give in his answer to the Libell (if he lives wthin 20 miles of the Cort, the next Cort day (if above 20 miles, the second Cort day after it is admitted [Three superimposed crosses on this item, as if to be removed]

10. Item And if the Plt doe not require [*..e*] his adversarys answer accordingly he shall lose the benefitt of it

11. Item If the Answer be not ful and plain the Answer shall be condemned in Costs but noe Allon touching ye Insufficiency of an answer shall be Admitted unless if it be given in the very next Court day following the Introduction of the answer

12. Item And if it be Alledged that the Answer is not full and plaine and the Judge or his Surrogate doe Judge otherwise the party soe Alledging shall likewise be condemned in the Costs wch shall be forth with paid respectively.

13. Item In case the defendent if he confess the matter deduced in the Libell doe not the next Cort day give in his [*Libell*] plea the cause shall stand concluded there and sentence the next Cort day After shall be given against him as if it had been given in the Court provided the answere give notice to ye advers Proctor

14. Item If the Wittnesses live 20 miles from the Cort they Shall be produced and examined by the second Cort day after the Answer is Given in if above 20 Miles the 3d Cort day after and when an answer is given in the next day after the Court it shall be the same thing

15. Item The plantif shall if he hath occasion from the defendents answer give in all his Additionall plea or matter the next Cort Day after the Answer is given In and shall prove the same by the next Cort day after the Answer to it is given And noe Additionall Alligation shall be admitted unless the party giving in the same (if Required by the Advers Proctor) shall sweare both he beleives he can prove it, and that he gives it not in [...] *Animo litem differendi*

16. Item That Commissions for Examination of Witnesses shall be praid and Decreed the next Cort day after the Answer is Given in and the place and time for Speeding the same together with Commissioners on both sides shall be named the same day in Case the party praying doe a weeke before give notice to the Advers Proctor of his intention to pray a Comion otherwise he shall have the Weeke following to name on his parte

17. Item Proctors shall give their attendance to the [*producing*] production of Parties Principall as well as Witnesses and to the praying of Compulsorys as well out of, as in Cort at Seasonable hours *solute feodo* and the Interrogatorys shall be brought, in *infra tempus consuetum vel quandocedqr ante Examinationem*

18. Item The Deft shall give in all his replicatory Matter or Exceptions agt Witnesses and propound all in fact the next Cort day

after the publication of the plts Wittnesses and the same terme shall be assigned for the Examination of his Witnesses and the pltfs answer as for the sd(?) Witnesses of the plantif And the answer of the defendant

19. Item And the same terme shall be Assigned the plt to plead to that reply and Acceptions against [*this*] his Wittnesses and to Examine his owne and to publish

20. Item And the first Cort day after such publication the cause shall be concluded and informations had in open Cort the munday next [*in open*] before the Cort following such Conclusion If the Judge doe not Appoint otherwise

21. Item And the said Cort following such conclusion sentence shall be given

22. Item The Expenses shall be taxed in the Sentence and A day therein appointed for the paymt of the *sors principalis* and Expenses *sub peona Excom* as in Remissory Sentences And A Monicon with Excom shall goe out accordingly, but the Monition shall not be sealed till 15 days after sentence the Expenses shall likewise be taxed and a day appointed for payment of them in all Absolutory sentences

23. Item the party *cona quam* shall appeale *apud Acta* the day sentence is given And the Judge or Surrogate (If he deferr to the appeale) shall assigne term [...] *processum loco apostalorid* and to certify (*de prosecutione*) by the 2d Cort day after

24. Item Whereas by the rules of the Arches Crt the Monicons Ad *transmittendum processum* are to be served on the Register if in or neare hand within A weeke after the decree for it, it remote within A fort neight and the Regr Paine in Not transmitting the process is by the sd rules not to be referred, the Regr shall upon sight of the Inhibicon gett the process ready to be transmitted and forthwith upon the Monition served on him transmitt the same and the Appellants Proctor upon serving the Register with the [*Inhibition*] Monition shall depositt to the Register in parte 20s and take an acquittance under his hand that thereby the Judge *ad quem* may be certified thereof otherwise the Registr shall not be obliged to transmitt it and the Appllntt he hath paid the remainder due for the transmission shall have noe other use of the processus

25. Item Whereas the Charges of transmitting the process is increased by transmitting the Judges Patent and proxies and the prfaces and discriptions of the causes before the Acts the same thing being repeated severall times the Judges patent being once transmitted in any cause thatt is transmitted noe more but reference thereof shall be made to the process wherein it was once transmitted Neither shall the proxies be transmitted *per Extensum* but to certifye in the process that such proxies were Exhited and are remaineing *penes Registrum* and the prfaces and descriptions of the causes as heretofore used before Every Act shall be Extended only before the first Act saveing the specification of the judg place and time

26. Item Noe term Probatory shall be Allowed for the proofe of any appeale *a gravamine* but the cause to stand and be concluded upon the

bringing in his process being intire in Causes where the greivances can appeare out of the process

27. Item All causes of Subtraction of Small Tythes Clarkes Wages and Church rates under 40s shall be proceeded in Summarily and the Witnesses Examined *viva voce* if the Judge think fitt

28. Item In causes of Legacies where the imediate Exor or *Administrator cum Testamento annexo* issued the Proctor who Gives in his Libell *post lites contestionem* may Exhibit a copy of the Will Extracted out of the Cort where it was proved or A copy of the clause or Legacy or copy of the Act upon the probat or grant of ye Administration subscribed by the Register or other publique Notary of the office and the proctor of the Advers party shall answer to the said Exhibit and alsoe to the Identitye of the persons *ad statim*

29. Item If a party agt whom a suite shall be brought (for A legacy or for any other cause) where the *plene Administravit* or any other Matter to avoid paymt may be pleaded, he shall doe the same the next Cort day after his answer to the Libell shall be given in (if his answer be desired) and Shall specifye the next Cort day after that and shall prove the Matter soe specified within the oficiall terme probatory which shall comence from the day the answer is given [*in*] to it though in Vacation time

30. Item Where any person is cited to Exhibit an Inry or Inry and Acct or to prove a will *per Testes* he shall Exhibit the same in forme of Law the next Cort day after his appeareance and the terme for the

Answer and production of Witnesses shall be the same as in other Causes

31. Item Where any Caviet is entered the [*Proctor*] Enterer upon 3 days notice shall be bound to appeare either upon A Cort day or any other [*day*] Assigned by the Judge or Surrogate to shew cause: though noe process be taken out agt his Clyent

Rules Ex officio

1. Fiats for Probats of Wills and Reservations as formerly.

2. Noe Originall Will to be delivered out till the same be proved *per testes.*

3. Noe Renunciation to be Admitted but where it containes a proxy to A Proctr to Exhibite it.

4. If noe Gardian be constituted by the will the Tuicon to be granted as formerly.

5. In all causes of Adions Statute bonds are to be Entred into according to the letter of the Statute.

References

1. WoRO 777.713 BA2706(iii).

APPENDIX 3.I

OFFICE BUSINESS: Cause types (excepting pre-nuptial immorality, and adultery)

1700-1719

Clergy/parish officials:
Authority of curate - 1
Churchwardens: illegal election - 2
Churchwardens: neglect of duties - 4
Churchwardens: unspecified - 1
Clergy discipline - 3
Clergy morals - 1
Clergy: suspension - 2
Curate: nomination - 2
Curate: unlicenced - 3
Failure to administer sacrament correctly - 1
Failure to baptise - 1
Midwife: licence - 1
Neglect of cure: dilapidations - 2
Nomination to benefice - 1
Parish clerk: election - 2
Presentation disputed - 1
Right of Baptism - 1
Teaching without a licence - 4

Parishioners:
Brawling - 22
Church seat (unspecified) - 4
Clandestine marriage - 11
Disturbance of service - 6
Failure to frequent church - 7
Hindrance of parish clerk - 1
Laying violent hands on the clergy - 2
Marriage: incest - 3 (Incest was not used in its present day meaning, but referred in these causes to re-marriage with the sister of the deceased)
Perjury - 1
Perturbation of sitting - 17
Profaning church: bells - 15
Profaning churchyard/chapelyard - 2
Profaning the Sabbath - 1
Scandal to the Ministry - 19
Slander of curate - 1

1770-1789

Clergy/parish officials:
Churchwardens: neglect of office - 1
Churchwardens: oath - 3
Churchwardens: unspecified - 3
Lock to parish chest - 1
Parish clerk: resignation - 1
Parish clerk: usurping office - 1

Preaching without licence - 2

Parishioners:
Brawling - 14
Church seat - intrusion - 3
Church seat unspecified - 1
Disturbing Minister - 1
Perturbation of sitting - 2
Scandal to the Ministry - 1
Trading on the Sabbath - 1
Violent hands on the clergy - 1

1810-1829

Clergy/parish officials:
Churchwardens: appointment - 1
Clerical immorality - 2

Parishioners:
Brawling - 10
Perturbation of sitting - 3
Profaning churchyard: breaking gates - 1

These listings demonstrate very clearly that the business of the courts began the downward slide not only through a reduction in the overall numbers of causes but also in the range of types of causes.

APPENDIX 4.I Occupations of defendents in tithe disputes, 1770-1789, (n = 225) 60 occupations given.

Gentry	Professional	Agriculture	Metalworkers	Food/drink
Esquire	Apothecary	Farmer	Awl blade mkr	Baker
Gentleman	Church bdle	Gardener	Blacksmith	Baker/grdnr
	Clerk	Husbandman	Buckle cutter	Butcher
	Excise Officer		Bucklemaker	Cheesefactor
	Surgeon		Engraver	Innholder
			Iron candlestick maker	Maltster
			Jobbing smith	Milkman
			Scythesmth mkr	Miller
			Thimble maker	Victualler
			Watchmaker	

Clothing	Extraction/ building	Transport	Traders	Miscellaneous
Breeches maker	Brick carrier	Horse follower		Basket maker
Button maker	Bricklayer	Saddle tree mkr		Chair maker
Button mould maker	Brickmaker	Wheelwright		Labourer
Cordwainer	Builder			Perfumer
Framework knitter	Carpenter			Serving man
Mercer/draper	Coal carrier			Yeoman
Shoemaker	Coal miner			
Staymaker	Coalmaster			
Tanner	Collier			
	Gilder			
	Glazier			
	Joiner			
	Plumber/glzr			

No occupation given = 52
= 23%
Farmers = 16.4%
Yeoman = 10.2%
% Agricultural = 26.6%

Abbreviations:

Bdle = beadle

Glzr = glazier

Grdnr = gardener

Mkr = maker

APPENDIX 4.II

The parish of Wem in the late seventeenth and early eighteenth centuries.

The manor of Wem was bought by Daniel Wycherley in 1665, a gentleman. (1) Following the death of his employer the Marquis of Winchester, Daniel endeavoured to redeem his finances by increasing the entry fines and amercements to his manor court. After eight years of such treatment, the tenants rebelled and 43 sought redress through the court of Chancery. The cause dragged on from 1673 to 1682. In the mean time, a disastrous fire had burned down 140 houses in the town in 1677, causing damage valued at £23,000. (2) This left 30 people with financial problems when their final legal bill for £3000 was received. (S.A.M. Garbet states that 13 of the original plaintiffs had been bought off by Wycherley (3)) Ironically, Wycherley's resources were also inadequate and he sold the manor in 1684. The manorial problems of Wem were further compounded when Judge Jeffreys bought the estate for £9000.

Alongside the legal problems of the parish, the seeds of religious divisions had been sown in 1662 when the curate of Edstaston began to preach privately in Wem. His successor continued to preach from 1695 to a Dissenting group who were, according to Garbet 'provoked by continual invectives of the curate'. (4) They were not deterred, and a chapel was established in a barn in the town in 1706.

During these first years of the new century a tithe cause was brought in the Lichfield courts against Joseph Smith by Mary

Whittacre, widow and farmer of tithes in 1703. Two years later a new farmer of tithes, Thomas Barnes, gentleman of Chester cited, not only Joseph Smith, but 170 other members of the community and extensive townships within the parish of Wem. (5) To what extent this represented the dissenting element is not yet known. Two individuals have been shown from the Manor Court Rolls to be tenants of local farms, but the status of the others is not clear. This massive cause did not progress far, and Thomas may have died in 1708. (6)

This evidence suggests a community well aware of the problems and costs of legal action through the civil courts, divided by Dissent as well as suffering debt and internal tensions.

References:

1. S.A.M. Garbet, A New Description of the Allotments of Wem and Shawbury in North Bradford (Wem, 1818), p. 68.
2. SaRO, 484/241-2 Calendar of Venables collection.
3. Garbet, Description of Wem, p.84.
4. Garbet, Description of Wem, p.213.
5. Four members of the Barnes family were amongst the original 43 plaintiffs who took Daniel Wycherley to court in 1673.
6. Jacob, 'Clergy and Society', discusses the links between Dissenters and tithe disputes. The family name Barnes was a common one in this area, as was the Christian name Thomas. The individual whose burial was listed in the Wem parish registers in 1706 may well have been the farmer of tithes. At some point his successor could also have borne the same name.

APPENDIX 6.I

LICHFIELD CONSISTORY COURTS, 1770-1789

Defamation causes, known plaintiffs and defendants.
[F = female: M = male. m = married, s = single, w = widow, u = unknown, y = younger, and e = elder]

Parish	*Co*	*Status*	*Plaintiff*	*Status*	*Defendant*
1770					
Trentham	St	Fm	Victualler	Fm	Labourer
Walsall	St	Fm	Carpenter	M	Blacksmith
Wednesbury	St	Fm	Surgeon	M	Surgeon
Bedworth	Wa	M	Bailiff/Coalworks	M	Innholder
Birmingham	Wa	Fm	Victualler	M	Jeweller
Coventry	Wa	Fm	Silkweaver	M	Silkweaver
1771					
Scropton	Db	Fm	Horn buckle maker	M	Farmer
Walsall	St	Fm	Bitt maker	Fm	Taylor
Birmingham	Wa	Fm	Bricklayer	Fm	Brassfounder
1772					
Mugginton	Db	Fs	Daughter of labourer	M	Blacksm/husbndmn
Audley	St	M	Yeoman	M	Collier
Birmingham	Wa	Fm	Button maker	M	Shoemaker
Cubbington	Wa	M	Wheelwright	M	Victualler
1773					
Pentrich	Db	M	Clerk	M	Yeoman
Coventry	Wa	Fm	Baker	Fm	Huckster
Stoneleigh	Wa	Fm	Labourer	Fm	Yeoman
1774					
Abbots Bromley	St	Fm	Sawyer	Fm	Labourer
Brampton	Db	Fm	Sawyer	Fm	Victualler
Walsall	St	Fm	Bridle bit maker	M	Bridle bitmaker
Birmingham	Wa	Fm	Peruke maker	Fm	Victualler
Coventry	Wa	Fm	Victualler	Fm	Labourer
Sutton Coldfld	Wa	Fm	Cordwainer	Fm	Carpenter
1775					
Duffield	Db	M	Clerk	M	Farmer
Coventry	Wa	M	Silkweaver	M	Victualler
Coventry	Wa	Fm	Builder	M	Victualler
Coventry	Wa	Fm	Blacksmith	M	Collarmaker
1776					
Worfield	Sa	Fm	Labourer	Fs	Dau wheelwright
Worfield	Sa	Fm	Labourer	M	Wheelwright
Croxden	St	Fm	Victualler	M	Miller
Swinnerton	St	Fs	Housekeeper	Fs	Cook
Binley	Wa	M	Malster/tilemaker	M	Farmer
Birmingham	Wa	Fm	Cordwainer	Fm	Boxmaker
Chilvers Coton	Wa	M	Clerk	M	Cordwainer

Coventry	Wa	M	Painter	Fm	Weaver
1777					
Duffield	Db	Fm	Frame work knitter	Fm	Frame work knitter
Condover	Sa	My	Yeoman	My	Farmer
High Ercall	Sa	Fm	Esquire	M	Farmer
Checkley	St	Fm	Farmer	M	Gatekeeper
Walsall	St	Fm	Blacksmith	M	Labourer
Bedworth	Wa	Fm	Labourer	Fm	Bricklayer
Birmingham	Wa	Fm	Gentleman	M	Baker
Birmingham	Wa	Fm	Jeweller	Fm	Bucklemaker
Birmingham	Wa	Fm	Innholder	M	Butcher
Birmingham	Wa	Fm	Watch maker	M	Steel grinder
Birmingham	Wa	Fm	Yeoman	M	Innholder
Coventry	Wa	Fm	Painter	M	Shopkeeper
1778					
Duffield	Db	Fm	Frame work knitter	Fm	Frame work knitter
High Ercall	Sa	Fm	Esquire	M	Farmer
Alton	St	Fm	Victualler	M	Miller
Dilhorne	St	Fm	Farmer	M	Husbandmn/carrier
Bedworth	Wa	Fm	Labourer	Fm	Brickmaker
Birmingham	Wa	Fm	Jeweller	Fm	Bucklemaker
Birmingham	Wa	Fm	Coalheaver	M	Boatowner/coal sel
Birmingham	Wa	Fm	Stamper	M	Locket maker
Birmingham	Wa	M	Broker	M	Gunsmith
Birmingham	Wa	Fm	Bricklayer	Fm	Cordwainer
1779					
Abbots Bromley	St	Fm	Carpenter	Fm	Maltster
Walsall	St	Fm	Whitesmith	M	Tanner
Wednesbury	St	Fm	Gunlock filer	M	Coal carrier
Wednesbury	St	Fm	Gunlock filer	Fm	Coal carrier
Birmingham	Wa	Fm	Jeweller	Fm	Bucklemaker
Birmingham	Wa	M	Vintner	M	Victualler
Birmingham	Wa	Fm	Stamper	M	Locket maker
1780					
Bradley	St	Fm	Farmer	M	Farmer
Kingswinford	St	Fm	Engineer	Fm	Collier
Wednesbury	St	Fm	Gunlock filer	Fm	Coal carrier
Wednesbury	St	Fm	Gunlock filer	M	Coal carrier
Aston	Wa	Fm	Victualler	Fm	Gardner
Aston, Erdin	Wa	M	Brushmaker	Fm	Gardner
Birmingham	Wa	M	Yeoman	M	Maltster
Birmingham mkr	Wa	Fm	Victualler	M	Button mould
1781					
Kingswinford	St	Fm	Engineer	Fm	Collier
Ranton	St	Fm	Yeoman	M	Yeoman
Birmingham	Wa	Fm	Gentleman	Fm	Cordwainer
Coventry	Wa	Fm	Carpenter	M	Barber/perukemkr
1782					
Nuneaton	Wa	Fm	Farmer	Fm	Farmer

1783

Duffield	Db	M	Baker	M	Yeoman
Bedworth	Wa	Fm	Weaver	Fm	Ribbon weaver

1784

Duffield	Db	Fm	Gentleman	M	Frame work knitter
Stone	St	Fm	Timber merchant	M	Sawyer

1785

Ansley	Wa	Fm	Victualler	M	Yeoman

1786

Chesterfield	Db	Fm	Butcher	M	Butcher

1787-1788 - NONE

1789

Uttoxeter	St	Fm	Innkeeper	M	Gentleman
Birmingham	Wa	Fm	Button mould turner	Fm	Victualler
Birmingham	Wa	Fm	Button mould turner	Fm	Victualler

APPENDIX 7.I

Dramatis Personae in Philips cWinter:

DECEASED: **John Philips**, bachelor of Stafford, tailor, age unspecified. 'John Philips was an old man at his death, he was crook back'd, long visaged, usually wore Cloathes of a lightish colour, his own hair turned gray, and thus he appeared when the deponent last saw him which was in the house place of the house where he boarded and died in Stafford'.(1) John 'had a rupture in his belly, which hindered his walking by himself and with a great deal of uneasyness she helped and assisted', he 'being forced to carry the rupture in his hands'. (2)

RELATIVES:
Henry Phillips, plaintiff, brother's son.
Thomas Phillips, nephew of John dec, baker at Redriff in Surrey*, lit. Brother's son.
William Winter, defendent, son of master tailor, executor of John's will, yeoman of Bradley, age 60, lit. Married late in life but wife not yet traced.
Mary Winter, dec. William Winter's sister and widow of John Peploe's brother.
Mrs Mary Peploe, widow of Amos Peploe, neice of William Winter, age 33, worth £300 or £400, lit. Lived at Deptford for some time, legatory and executor of Mary Winter, William Winter's sister and widow of John Peploe's brother.
John Peploe, clerk of Stallington, age 36, brother in law to Mary Peploe, lit. (3) Distantly related to Mary and William Winter. Pays taxes to the king.
Mary Salt, mantua maker, sister in law of Mary Peploe, age 35 (als Moor) of Southwark, m. Charles Salt gunsmith, but lived apart because of his cruelty. Charles Salt brother of Thomas Salt.
Martha Salt, widow of Deptford, age 60 and mother of Mary Peploe.

* Now known as Rotherhithe.

LAWYERS:
George Jones, attorney or scrivenor of Crooked Lane, London, possible writer of Deed of Gift.
Thomas Palmer Gent of Stafford, age 50, lit. 'Don som business for ... Thomas Philips as an Attorney or Solicitor and has received about 2 guineas from him, his demands being £3.17s.6d'.
John Richardson, gent of Stafford, age 60, possible Judge.
Mr Paul Smith, gent, age 40, attorney of Stafford, lit. Probably worth £4000 or £5000. Possible couzen of William Winter but 'how or in what degree they are related [he] knows not'.
Mr Thomas Smith, attorney of Stafford.

FRIENDS AND FOES:

George Aspley, waggoner.
William Bagnall, near neighbour of John Phillips, alehouse keeper, witness to John's will.
William Bagnall, barber, age 34, son of William Bagnall snr, worth £100.
Thomas Bagnall, butcher, age 37, son of William Bagnall snr, worth £100.

William Blackshaw, butcher, also described by Thomas Palmer as an ox-buyer, age 66 of Redriff in Surrey. lit.
Richard Bolton of Stafford, cooper, age 70, illit.
John Crutchley of Stafford, Innholder, age 28, lit. Father kept the Flying Swan Inn, died Mar 1714.
Nathaniel Dean, husbandman,age 70, of Lawn Head, Ronton Abbey in Ellenhall parish.
William Dix, friend of John, husbandman, age 50, worth £300, lit. Trusted with John's writings.
Henry Flint, horsteller (ostler), age 44, illit. Served apprenticeship with Richard Sharpless who married the deced's niece. Witness to Deed of Gift.
Mary Foster, spinster, age 17, servant to John Phillips, illit. Nothing to live on except service.
James Harding of Hartley Green, Gayton, yeoman age 45, hopes he is worth £300 or £400.
Thomas Lycett, of Warlton, witness to John's will.
Anne Morrey (Morrice), spinster, age 30, servant to William Winter for 5 yrs, illit. 'A just and honest person.' 'A Charr-woman to many good families'.
Humphrey Pain of Gnosall, yeoman, age 51, illit.
Samuel Perkin of Stafford, victualler, age 36, lit.
William Philips of Bradley, age 60, yeoman, lit.
Elizabeth Read wife of John Read of Stafford, victualler, illit., next neighbour to William Winter. Received Sacrament 3 years previously.
Thomas Salt, scriptor, age 37, lit. Wife related to Ward 'at great distance'. Never received Communion. Pays no taxes to king or poor. Burgess of Stafford and given and worth 20s. p.a. Brother of Mary Salt and Mary Peploe and boarded in Winter household as a child. Previously worked for Excise.
John Sharples, charged with forging Deed of Gift and Letters.
Mr Thomas Smith, jailor, age 36, lit.
Edward Swynsen, of Stafford, husbandman, age 32, lit.
Widow Tranter, of Lichfield, sister of Thomas Palmer, gent.
William Tranter, baker of Redriffe.
Joseph Walforne, clerk, rector of St. Marys Stafford, age 45, lit. Mary paid him a mortuary for her Aunt.
Thomas Ward, farmer of Stafford, age 50. Worth £400 debts paid.
Margaret Wilson, widow of Stafford, age 40, lit. Pays taxes for her Jointure.

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1. LJRO, B/C/5/1714/72:Testamentary:Philips c Winter, Deposition of John Peploe, jun.
2. LJRO, B/C/5/1714/62:Testamentary:Philips c Winter, Deposition of Mary Peploe.
3. In his deposition of 22 Mar 1715 he is described as John Peploe jn of Forbridge in Castlechurch, clerk 37 years old.

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Abbreviations:

ChRO	Cheshire Record Office
DeRO	Derbyshire Record Office
LeRO	Leicestershire Record Office
LJRO	Lichfield Joint Record Office
NorRO	Norfolk Record Office
SaRO	Shropshire Record Office
StRO	Staffordshire Record Office
WoRO	Worcester Record Office, Fish Street
WSL	William Salt Library, Stafford

Manuscript Sources:

ChRO
EDR 6/19 Listing of Fees
RO EDC 1/119 Court Book

DeRO
D3705 Glossop Easter Books

Gloucester Public Library, Local History Room
Hockaday MSS.

LeRO
1D41/4 Leicester Archdeaconry Court records

Library of the Society of Friends, London - Great Book of Sufferings

LJRO
B/V/2 Excommunication books
B/V/4 Visitation Citations
B/C/2 Court Books
B/C/5 Consistory Court Papers
B/A/18 Unlisted Account Books
B/A/19 In-letters to William Buckeridge
B/A/19 Copy out-letters of Richard Raines
B/A/20 Formularies
D30 Dean and Chapter Act Books

SaRO
1374 Davenport papers
484/241-2 Calendar of Venables collection
P250 Account book of the vicar of Holy Cross

StRO
D917 Hand Morgan collection - Solicitors papers

Worcester RO
BA2234 Derby Archdeaconry Court Book
BA2670 Draft of security to be given by an apparitor
BA2706 Notebook, Rules of the Lichfield Court
BA2835 Rules of the Worcester Court
Papers of Thomas Vernon
BA2486 Notebook

WSL
93-97/31 Leigh Tithe Book
S.MS 429/iii Baswich Tithe Book
pBOX/L/2/13/6/1 Smallbroke, Richard A charge delivered to the Reverend the Clergy of the Diocese of Lichfield and Coventry in the Primary Visitation of the same in 1732 and 1733 (1734).

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